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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, and
Chicago, IL, see announcement on the inside cover of this
issue.



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- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 915 and 944

[Docket No. AMS-FV-88-067]

Avocados Grown in South Florida and Imported Avocados; Maturity Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule the provisions of an interim final rule which changed the minimum maturity requirements currently in effect on a continuous basis for shipments of fresh avocados grown in South Florida, and for avocados imported into the United States. The interim final rule changed the maturity shipping schedules for the Pinkerton and Reed varieties of avocados, added the Buccaneer variety to the schedule, and deleted the Day variety from the schedule. That rule also made changes in the maturity schedule in Table I of the regulation to synchronize it with the 1988-89 calendar years. These changes were designed to promote orderly marketing conditions for avocados in the interest of producers and consumers, and to provide fresh markets with mature fruit to create and maintain consumer satisfaction and sales.

EFFECTIVE DATES: Section 915.332 is adopted as a final rule effective August 17, 1988. This section is applicable to avocados imported into the United States under § 944.31 as of August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 96456, Room 2525-S, Washington, DC 20250, telephone (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1, and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this section on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 34 handlers of Florida avocados subject to regulation under the marketing order for avocados grown in South Florida, and an estimated 20 importers who import avocados into the United States. In addition, there are approximately 300 avocado producers in South Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and agricultural services firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers, importers, and producers may be classified as small entities.

An interim final rule amending § 915.332 *Florida avocado maturity regulation* was issued May 31, 1988, and published in the Federal Register (53 FR 20601, June 6, 1988). Section 915.332 specifies continuous maturity requirements for fresh shipments of avocados grown in South Florida. The

maturity requirements are in terms of color for certain varieties which turn red or purple when mature, and in terms of minimum weights or diameters for specified time periods during the shipping season for some 60 varieties and two seedling types of avocados grown in Florida. The time periods are for seven-day increments, beginning on Monday of each week and ending on Sunday.

The interim final rule changed the maturity shipping schedule and minimum weight and diameter requirements for the Pinkerton and Reed varieties of avocados based on maturity test data developed last season. That rule also added the Buccaneer variety to the maturity shipping schedule, and deleted the Day variety from the schedule, based on shipping data developed last season for all varieties. Such data shows that a new variety, the Buccaneer, was shipped for the first time last season, while the Day variety was not shipped. In addition, that rule made necessary changes in the effective periods specified in Table I of the maturity regulation to synchronize these periods with the 1988-89 calendar years.

The changes in the maturity requirements applicable to Florida avocado shipments were unanimously recommended by the Avocado Administrative Committee. The committee works with the Department in administering the marketing agreement and order program.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The current minimum maturity requirements applicable to fresh shipments of avocados grown in South Florida and imported avocados have been in effect on a continuous basis since the 1987-88 season. The maturity requirements for Florida avocados are intended to prevent the shipment of

immature avocados, to improve buyer confidence in the marketplace, and to foster increased consumption. Similar maturity requirements have been issued each year over the past several seasons, and Florida avocado producers and handlers have found such requirements beneficial in the successful marketing of their avocado crops.

The minimum weight and diameter maturity requirements are used primarily during the first part of the harvest season for each variety to make sure that the avocados are sufficiently mature to complete the ripening process prior to shipment. Another maturity requirement based on the skin color of the fruit is also used to determine maturity for certain varieties of avocados which turn red or purple when mature. The maturity requirements are designed to make sure that all shipments of Florida avocados are mature, so as to provide consumer satisfaction essential for the successful marketing of the crop, and to provide the trade and consumers with an adequate supply of mature avocados in the interest of producers and consumers.

Some Florida avocado shipments are exempt from the maturity requirements. Handlers may ship up to 55 pounds of avocados during any one day under a minimum quantity exemption, and may make gift shipments of up to 20 pounds of avocados in individually addressed containers. Also, avocados utilized in commercial processing are not covered by the maturity requirements.

Fresh Florida avocado shipments are projected at 1,200,000 bushels (55 pounds net weight) for the 1988-89 season, compared with fresh shipments of 1,129,587 bushels shipped in 1987-88, 956,217 bushels in 1986-87, and 1,110,130 bushels in 1985-86. Florida avocados are shipped every month of the year. The new season normally begins with light shipments of early varieties in late May or early June, with heavy shipments following in late June or early July. Florida avocados compete primarily with avocados produced in California, with estimated shipments of about 9,000,000 bushels during the 1987-88 season. Avocados imported into the United States amounted to about 287,000 bushels in 1987.

A minimum grade requirement of U.S. No. 2 is also currently in effect on a continuous basis for Florida avocados under § 915.306 (7 CFR Part 915).

Section 8e of the Act (7 U.S.C. 608e-1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or

maturity requirements as those in effect for the domestically produced commodity. Since this action continues the changed maturity requirements for domestically produced avocados, the changed requirements are also continued for imported avocados.

Avocado import maturity requirements are specified in § 944.31 (7 CFR Part 944). That section establishes comparable maturity requirements for avocados imported into the United States, based on the maturity requirements specified in § 915.332 for avocados grown in Florida. Comparable requirements may be issued upon not less than three days notice whenever the Secretary determines that the application of restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the imported and domestic commodity.

Avocado import grade requirements are currently in effect on a continuous basis under § 944.28 (7 CFR Part 944). Such grade requirements specify that all avocados imported into the United States must grade at least U.S. No. 2, which requires that the avocados be mature.

The avocado maturity and grade import regulations both contain an exemption provision which permits persons to import up to 55 pounds of avocados exempt from such import requirements.

The maturity requirements, specified herein, reflect the committee's and the Department's appraisal of the need to change the maturity requirements applicable to domestic and import shipments of avocados.

Therefore, the Department's view is that changing the maturity regulations would not adversely impact growers, handlers, and importers. The application of the maturity requirements to both Florida and imported avocados over the past several years have helped to assure that only mature avocados were shipped to fresh markets. The committee continues to believe that the maturity requirements for Florida avocados are needed to improve grower returns. Although compliance with these maturity requirements would affect costs to handlers and importers, these costs appear to be significantly offset when compared to the potential benefits of assuring the trade and consumers of mature avocados.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and

recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) Avocado handlers are aware of these changed maturity requirements, which were unanimously recommended by the committee at a public meeting; (2) this action continues, unchanged, maturity requirements currently in effect for Florida avocados and handlers would need no additional time to continue operating in accordance with such requirements; (3) shipment of the 1988-89 season Florida avocado crop is currently underway; (4) the avocado import requirements are mandatory under section 8e of the Act; (5) the interim final rule provided a 30-day comment period, and no comments were received; and (6) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

7 CFR Part 944

Food grades and standards, Imports, Avocados.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Parts 915 and 944 is taken:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR Parts 915 and 944 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Accordingly, the interim final rule amending § 915.332, which was published in the *Federal Register* (53 FR 20601, June 6, 1988), is adopted as a final rule without change.

3. This section is applicable to avocados imported into the United States under § 944.31 as of August 22, 1988.

Dated: August 11, 1988.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 88-18516 Filed 8-16-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-98-AD; Amdt. 39-5998]

Airworthiness Directives: Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, except for the Model A300-600, which requires certain changes to the procedures in the Airplane Flight Manual (AFM) related to operation of the emergency lighting system. This amendment is prompted by pilot reports that the emergency lighting system does not illuminate with loss of AC power, and that the AFM does not contain compensating procedures which would ensure that the lights would be turned on by the flight crew prior to the need for an emergency evacuation. This condition, if not corrected, could result in the lack of emergency lighting for evacuation of the airplane's occupants in an emergency when the airplane's normal AC power is interrupted.

EFFECTIVE DATE: September 2, 1988.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Générale de L'Aviation (DGAC), which is the airworthiness authority of France, has notified the FAA of an unsafe condition which may exist on Model A300 series airplanes, excluding the Model A300-600, relating to the operation of the emergency lighting system. There have been pilot reports that, during a check of the emergency lighting system, the lights did not illuminate with loss of AC power, and the Airplane Flight Manual (AFM) did not contain compensating

procedures which would ensure that the lights would be turned on by the flight crew prior to an emergency evacuation. [Federal Aviation Regulation (FAR) § 25.812 requires that the emergency lighting system illuminate upon loss of the airplane's normal electrical power, or that procedures exist which will ensure that emergency lighting is provided without the need for crew action during an emergency evacuation.] This condition, if not corrected, could result in the lack of emergency lighting during an evacuation when the airplane's normal AC power is interrupted.

The FAA has determined that the operational procedures in the AFM must be revised to require that:

a. The MIN CABIN LT selector, if installed, be in the "ON" position for taxi, takeoff, landing, and ditching. This will ensure that the cabin overhead exit lighting is provided for emergency evacuation independent of any further crew action, but does not provide for illumination of the floor proximity lighting.

b. The EMER EXIT LT selector be switched to the "ON" position by the flight crew for emergency evacuation. This will provide for illumination of the floor proximity lighting, but requires crew action when conducting an emergency evacuation. The EMER EXIT LT selector cannot be switched on earlier since the battery which powers the system only has the capacity to provide illumination for approximately 13 minutes.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist on other airplanes of the same type design registered in the United States, this AD requires revising the AFM to ensure cabin illumination will be provided for an emergency evacuation. This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking pursuant to this subject.

Since a condition exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same

subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, excluding the Model A300-600, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the possibility that the emergency lighting will not be provided to the airplanes occupants for evacuation when the airplanes normal AC power is interrupted, accomplish the following.

A. Within 10 days after the effective date of this AD, the following procedures must be applied and a copy of this AD or the changes indicated below must be inserted in the appropriate Section of the Airplane Flight Manual (AFM), as indicated below:

1. This sentence is to be inserted facing 3-02-00 page 11:

"EMERGENCY PROCEDURES—DITCHING"

When ditching, the MIN CABIN LT selector (if installed) must be switched ON".

2. This sentence is to be inserted facing 3-02-00 page 12:

"EMERGENCY PROCEDURES—EMERGENCY EVACUATION"

When the procedure EMERGENCY EVACUATION is applied, the EMER EXIT LT selector must be selected 'ON' after parking brake is ON".

3. This sentence is to be inserted facing 4-03-00 page 1:

"NORMAL PROCEDURES—TAXI"

Prior to push back, the MIN CABIN LT selector (if installed) must be switched 'ON' and remain ON until gear retraction."

4. This sentence is to be inserted facing 4-03-00 page 4:

"NORMAL PROCEDURES—LANDING"

Before landing, the MIN CABIN LT selector (if installed) must be switched 'ON' and should remain ON until engine shutdown or until parked."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.
Note.—The request should be forwarded through an FAA Principal Operations Inspector (POI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 2, 1988.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18542 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-01-AD; Amdt. 39-5996]

Airworthiness Directives: Boeing Model 737-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires the modification of the autopilot flight control computers (FCC) and autopilot mode control panel (MCP). This amendment is prompted by reports of Boeing Model 737-200 series airplanes (equipped with Sperry Model SP-177 autopilots) having reported occurrences of non-selected changes in Altitude (ALT), Indicated Airspeed/Mach (IAS/MACH) and/or Vertical Speed (V/S) display window values on the autopilot mode control panel. This condition, if not corrected, could result in the airplane flying at an unassigned altitude.

EFFECTIVE DATE: September 23, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; and Honeywell Incorporated, Sperry Commercial Flight Systems Group, P.O. Box 21111, Phoenix, Arizona, 85036, Attn: Customer Services, Air Transport Systems Division. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Alvin Habbestad, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway, South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement or modification of the FCC and MCP on certain Boeing Model 737-200 series airplanes, was published as a Supplemental Notice of Proposed Rulemaking (NPRM) in the Federal Register on April 29, 1988 (53 FR 25406). That action amended an earlier NPRM, published in the Federal Register on February 19, 1987 (52 FR 5140), to specify different, improved replacement parts and modification units, and to reflect different revisions of the applicable

service bulletins. The requirement to install these improved parts and units was necessary, since those called out in the original NPRM proved to be inadequate in eliminating the unsafe condition addressed in this AD action.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the single comment received in response to the Supplemental NPRM.

The commenter, the Air Transport Association (ATA) of America, expressed concern that its operators who have already modified the subject units in accordance with earlier service bulletin releases will be required to modify the units again. Since the modification will be accomplished by the manufacturer, the ATA requested that FAA verify that the manufacturer's modification schedule is compatible with the proposed compliance period. The FAA has been advised by Sperry Corporation that modification of the fleet can be accomplished in a timely manner in accordance with the compliance time required by this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to replace the units or 24 manhours per airplane to modify the affected components; and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$13,400 to replace the units, or \$64,320 to modify the affected components.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule, will not have a significant economic impact, positive or negative, on a

substantial number of small entities because few, if any, Boeing Model 737 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applied to Model 737-200 series airplanes, equipped with Sperry Model SP177 autopilot flight control computers (FCC) and mode control panels (MCP), as listed in Boeing Service Bulletin 737-22A1090, Revision 1, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent non-selected changes in airplane Altitude (ALT), Indicated Airspeed/Mach (IAS/MACH) and/or Vertical Speed (V/S) display windows on the autopilot mode control panel, accomplish the following:

A. Within one year after the effective date of this AD, accomplish either of the following:

1. Install improved FCC and MCP described in Boeing Service Bulletin 737-22A1090, Revision 1, dated February 25, 1988; or

2. Modify the FCC and MCP in accordance with Honeywell Service Bulletins A21-1141-162, dated November 20, 1987, and 21A-1141-163 dated February 19, 1988.

B. An alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Avionics Inspector (PAI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the

manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; and the Honeywell Corporation, Sperry Commercial Flight Systems Group, P.O. Box 21111, Phoenix, Arizona 85036, Attn: Customer Services, Air Transport Systems Division. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 23, 1988.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18546 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-10-AD; Amendment 39-6000]

Airworthiness Directives; British Aerospace (BAe) PLC, Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain BAe Jetstream Model 3101 (includes Model 3100) airplanes, which requires an initial inspection of the essential busbar to determine if adequate clearance exists to prevent arcing to surrounding structure, and modification to remedy the inadequate clearance. This action is the result of an FAA review of a report of arcing and the subsequent issuance of a mandatory Alert Service Bulletin by the foreign airworthiness authority. The actions specified in this AD will prevent arcing, and possible loss of essential bus services during critical phases of flight.

EFFECTIVE DATE: September 16, 1988.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD unless already accomplished.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 24-A-JM7631, dated September 10, 1987, applicable to this AD may be obtained from British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket, FAA, Office of the

Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. Ted Ebina, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. John P. Dow, Sr., FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION:

A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring an initial inspection of the essential busbar to determine if adequate clearance exists to prevent arcing to surrounding structure, and modification to remedy the inadequate clearance on certain BAe Jetstream Model 3101 (includes Model 3100) airplanes was published in the *Federal Register* on April 11, 1988 (53 FR 11871). The proposal resulted from a report by a Jetstream Series 3100 airplane operator of arcing between the terminal of a cable and an adjacent busbar mounting bracket on the lefthand bulkhead at fuselage station 130. Consequently, British Aerospace issued Notice to Operators No. J 31-24-2 to advise operators of this situation and provide a suitable interim rectification action. This was followed by issuance of ASB Jetstream 24-A-JM7631, dated September 10, 1987, which describes an initial inspection of the terminal area to ensure adequate clearance exists between the terminal tag of a cable and an adjacent structure. This inspection allows continued operation, and describes remedial action to provide adequate clearance if it does not exist.

The Civil Aviation Authority (CAA) of the United Kingdom (UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the UK, classified this Alert Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of ASB Jetstream 24-A-JM7631, dated September 10, 1987, and the mandatory classification of this Service Bulletin by the CAA-UK, and concluded that the condition addressed by BAe ASB Jetstream 24-A-JM7631, dated September 10, 1987, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the Federal Aviation Regulations to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public.

The FAA has determined that this regulation involves approximately 120 airplanes at an approximate one time cost of \$30 for the inspection action and \$120 for the modification action when it is required for each airplane, or a total one time maximum fleet cost of \$18,000. The cost of compliance with the proposed AD is so small that it will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace (BAe): Applies to Model 3101 (includes Model 3100) Jetstream (Serial Numbers 601 thru 646, 648 thru 655, 657, 658, 660 thru 666, 668 thru 695, 697 thru 708, 710 thru 713, 715 thru 741, 743 thru 756, and 758 thru 761) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent electrical arcing and possible damage to the airplane with loss of essential electrical bus services, accomplish the following:

(a) Visually inspect for correct cable terminal ends on cable PD4 and PD6 at terminal post T1BH-2 as described in British Aerospace (BAe) Alert Service Bulletin (ASB) Jetstream 24-A-JM7631, dated September 10, 1987, "Part A—Initial Inspection". If the installation is not as described in the above ASB, prior to further flight modify the cable terminal configuration of cables PD4 and PD6 at terminal post T1BH-2 as described in BAe ASB Jetstream 24-A-JM7631, dated September 10, 1987, "Part B—Rectification".

(b) A 10% adjustment to the compliance time may be used to allow accomplishment of the AD with other scheduled maintenance activities.

(c) The airplane may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA c/o American Embassy, 1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20091; Telephone (703) 435-9100; or may examine this document at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 16, 1988.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18545 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-103-AD; Amdt. 39-5999]

Airworthiness Directives: De Havilland Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to De Havilland Model DHC-8-100 series airplanes, which requires inspection and adjustment, where necessary, of the engine starter-generator brush access cover. It also requires adding a rubber grommet or sealant material at the terminal block area of the generator. This amendment is prompted by field observations of open gaps and cavities on the engine starter-generator, which is located near high pressure fuel components and lines. This condition, if not corrected, could result in explosion and fire when a fuel leak comes in contact with internal arcing of the generator.

EFFECTIVE DATE: September 2, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., De Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: M. Schoenberger or P. Perrotta, ANE-174, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: It has been determined that a potential fire hazard exists on some starter-generator installations on De Havilland Model DHC-8-100 series airplanes because of openings on the generator housing at the brush access cover band and at the terminal block where the conductor bars enter the housing. The location of the starter generator on the engine is close to high pressure fuel components, lines, and fittings. This renders the unsealed starter generator a potential ignition source. It delayed ignition occurs after a high pressure fuel leak, serious nacelle damage could result.

The FAA has reviewed and approved Lucas Aerospace Service Information Letter No. 23088-00X-03, dated June 20, 1988, which describes procedures for positioning, securing, and re-safetywiring the brush access cover band on each starter-generator; and Service Information Letter No. 23088-00X-04, Revision 1, dated July 28, 1988, which describes procedures for sealing the open area of the terminal slot.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires positioning of the brush access cover to close off gaps at the clamp end, and either adding a rubber grommet at the terminal block conductor bars or, as an interim measure, applying sealant material around the terminal block openings, in accordance with the service bulletins previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA intends to revise this rulemaking action to require the installation of the rubber grommet seal on all affected Model DHC-8-100 series airplanes; the optional action of applying the sealing compound, as reflected in paragraph B, is considered interim action at this time. However, the proposed compliance time for installation of the seal is sufficiently long so that notice and public comment will not be impracticable.

Additionally, Lucas Aerospace has advised FAA that it is preparing additional service information concerning procedures for installing the grommet seal; when the information is available, the FAA may consider including those specific procedures in the requirements of this AD.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been

further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 87-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

12. By adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Applies to all Model DHC-8-100 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent ingestion of flammable fluids into the engine starter-generator, which could cause a fire in the nacelle, accomplish the following:

A. Within five calendar days after the effective date of this AD, and thereafter every time the brush access cover band has been loosened or whenever a starter-generator is replaced, position, secure, and re-safetywire the brush access cover band on each engine starter-generator, in accordance with Lucas Aerospace Service Information Letter No. 23088-00X-03, dated June 20, 1988.

B. Within 150 flight hours after the effective date of this AD, seal the openings around the terminal post conductor bars where they enter the generator case by either using a Lucas Aerospace Power Equipment Corporation (Lucas Aerospace) grommet, Part Number 23088-1290; or applying a fillet of Dow Corning RTB-738 sealing compound and MIL-P-46112B Kapton sheet, in accordance with Lucas Aerospace Service Information Letter No. 23088-00X-04, Revision 1, dated July 28, 1988.

Note.—Care should be exercised to ensure excess sealant is not allowed to enter the interior of the starter-generator. Also, verify that sealed joint has cured in accordance with manufacturer's instructions prior to operation of the engine.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, New York Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., De Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective September 2, 1988.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeney,
Acting Director, Office of Airworthiness.
[FR Doc. 88-18543 Filed 8-16-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-29-AD; Amdt. 39-6002]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires the covering of a gap in the engine compartment firewall between the core cowl and thrust reverser cowl interface at the pylon to cowl fillet fairing. This amendment is prompted by reports of a gap in the firewall in this area of approximately $\frac{3}{8}$ inch by 4 inches. This condition, if not corrected, could result in penetration of an engine fire through this gap, which may then spread to other parts of the airplane.

EFFECTIVE DATE: September 26, 1988.

ADDRESSES: The applicable service information may be obtained from

Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven P. Clark, Propulsion Branch, ANM-140S; telephone (206) 431-1963. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the covering of a gap in the engine compartment firewall between the core cowl and thrust reverser cowl interface at the pylon to cowl fillet fairing on Boeing Model 767 series airplanes, was published in the Federal Register on April 22, 1988 (53 FR 13286).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments were received from Boeing and the Air Transport Association (ATA) of America:

Boeing commented that the applicability of the rule should be limited to the Model 767 airplanes with Pratt and Whitney JT9D-7R4 series engines and General Electric CF6-80A and -80A2 engines only. The conditions cited in the NPRM do not exist in the Model 767 airplanes equipped with General Electric CF6-30C2 or Pratt and Whitney PW4000 series engines. The FAA concurs with these comments and the applicability statement has been revised in the final rule to more clearly state which Model 767 engine installations are affected.

The ATA commented that, while no ATA member expressed technical objection to the proposed rule, nearly all of the affected members expressed concern with the 90 day compliance period. ATA requested that a compliance period of 180 days after the effective date of the AD be adopted for the following reasons:

1. The cost impact data provided in the proposed rule indicates that it would take approximately 14 manhours per airplane to accomplish the required modifications. After issuance of the NPRM, Boeing issued Service Bulletins 767-54A0027 for the JT9D engine installations, and 767-54A0028 for the CF6 engine installations, with estimate

28 to 32 manhours per airplane. The elapsed time estimate is eight hours, which does not include the cure time for an epoxy that is necessary. This epoxy set-up time requires an additional eight hours minimum or, preferably, an additional 24 hours elapsed time. This will require the operators to schedule the modification at a main maintenance base visit. If a 90 day compliance period is adopted, the operators will be forced to reschedule their operations in order to accommodate the additional maintenance holds that will likely result in airplanes being removed from scheduled operations.

2. The ATA understands that, while some parts kits are now available, the kits for spare engines will not be available until July 28, 1988.

3. ATA believes that air safety will not be compromised by extending the compliance period to 180 days.

The FAA concurs with this request. The 14 manhours accomplishment time reflected in the NPRM was based on initial estimates of the time required to incorporate the firewall seals that were still under development by Boeing. Although the NPRM does not specify any particular firewall seal design, it was recognized by, and was the intent of, the FAA that the Boeing firewall seal design would be the predominant means of compliance with the AD. Since the final estimate for the installation of this design effectively extends the AD action from an overnight stop for each airplane to a main maintenance base visit, the FAA concurs with the ATA comment that airplanes would be required to be removed from scheduled operations with the 90 day compliance period. The FAA does not consider the comment concerning spare engine kit availability to have any major relevance in this determination since the AD only applies to engines already installed on airplanes. A modified cowling can be transferred to a spare engine when it is installed. In any case, kits are expected to be available for all engines, including spares, by July 28, 1988. The FAA has determined that air safety would not be significantly compromised by extending the compliance period from 90 to 180 days. Therefore, the AD has been revised accordingly. Additionally, the cost impact analysis has been revised to reflect the latest data concerning the number of manhours and costs required for accomplishing the requirements of this AD.

The NPRM stated that Boeing was developing service bulletins for both the Pratt and Whitney JT9D and General Electric CF6 installations, which would accomplish the intent of the proposed rule and that these service bulletins

could be referenced as an acceptable means of compliance when approved by the FAA. Boeing Service Bulletin 767-54A0027, addressing JT9D-7R4D, -7R4E, and -7R4E4 powered Model 767 airplanes, was approved on June 2, 1988. Boeing Service Bulletin 767-54A0028, addressing CF6-80A and -80A2 powered Model 767 airplanes, was approved on June 10, 1988. Since these service bulletins are currently available, the AD has been revised to state that a firewall seal assembly installed in accordance with these service bulletins is an acceptable means of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes noted above.

It is estimated that 90 airplanes of U.S. registry will be affected by this AD, that it will take approximately 31 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. It is estimated that parts would be provided at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$111,600.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, equipped with Pratt and Whitney JT9D-7R4D, -7R4E, or -7R4/E4 engines, or General Electric CF6-80A or -80A2 engines, certificated in any category. Compliance required within 180 days after the effective date of the AD, unless previously accomplished.

To preclude the spread of an engine fire to other parts of the airplane through a gap in the engine firewall, accomplish the following:

A. Accomplish either paragraph A.1., or A.2., below.

1. Install a firewall seal to cover a gap located between the engine core cowl and thrust reverser cowl at the pylon to cowl fillet fairing, in a manner approved by the manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

2. Install a firewall seal assembly in accordance with Boeing Alert Service Bulletin 767-54A0027, dated June 2, 1988, for airplanes equipped with Pratt and Whitney JT9D-7R4D, -7R4E, or -7R4/E4 engines; or Boeing Alert Service Bulletin 767-54A0028, dated June 10, 1988, for airplanes equipped with General Electric CF6-80A or -80A2 engines.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 26, 1988.

Issued in Washington, DC, on August 9, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18539 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-28-AD; Amdt. 39-6001]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires inspection of the aft pressure bulkhead for damage and cracking, and repair, as necessary. This amendment is prompted by reports of damage on the aft side of the pressure bulkhead sustained during maintenance operations. This condition, if not corrected, could lead to failure of the aft pressure bulkhead and depressurization of the airplane.

EFFECTIVE DATE: September 26, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection of the aft pressure bulkhead on certain Boeing Model 767 airplanes for damage and cracking, and repair, as necessary, was published in the *Federal Register* on April 22, 1988 (53 FR 13285).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments from the manufacturer and one operator were received requesting

that the initial threshold for inspection be adjusted for those operators currently accomplishing the required inspection at 6,000 flight cycle intervals. The FAA notes that credit for previously performed inspections is provided by the statement "unless previously accomplished," reflected in the compliance statement of the rule. Paragraph A. of the AD has been revised, however, to clarify the intent of the rule in this regard.

An operator requested that a definition of a flight cycle be included in the final rule to note that, when cabin differential pressure is below 2.0 PSI, flight cycles need not be counted. The FAA concurs with this request and has added a new paragraph C. to the AD to include this definition. The FAA has determined that this revision is congruent with the intent of the AD and will not adversely impact safety.

The Air Transport Association (ATA) of America, on behalf of its members, had no objections to the proposed AD. However, it requested a note be added to the AD which states that a detailed inspection accomplished in accordance with the Maintenance Planning Document (MPD) constitutes an equivalent inspection to the inspection described by the service bulletin referred to in the proposed AD. The FAA does not concur with this request since the MPD is not FAA-approved. Under the provisions of paragraph D., however, operators may request approval for alternate means of compliance for inspections equivalent but not identical to those required by the AD.

Additionally, the final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph D.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously described.

The FAA notes that, at this time, inspection procedures for fatigue cracking are not contained in the referenced Boeing service bulletin; however, the manufacturer has advised FAA that the service bulletin will be revised to include such procedures.

When these inspection procedures are available, the FAA may consider further rulemaking to revise this AD to require inspection for fatigue cracks.

It is estimated that 82 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. Operators is estimated to be \$39,360.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line numbers 1 through 175,

certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a condition that could lead to depressurization of the airplane, accomplish the following:

A. Prior to the accumulation of 6,000 flight cycles or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs later, unless accomplished within the last 5,000 flight cycles, and thereafter at intervals not to exceed 6,000 flight cycles, perform a detailed visual inspection of the aft side of the entire body station 1582 pressure bulkhead for damage (as defined in the Structural Repair Manual) and cracking, in accordance with Boeing Service Bulletin 767-53-0026, dated November 19, 1987.

B. Repair damage and cracking, prior to further flight, in accordance with Boeing Service Bulletin 767-53-0026, dated November 19, 1987.

C. For the purposes of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was equal to or greater than 2.0 PSI.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 26, 1988.

Issued in Washington, DC, on August 9, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18540 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-88-AD; Amdt. 39-6003]

Airworthiness Directives: British Aerospace Viscount 700 and 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of British Aerospace (BAe) Viscount Model 700 and 800 series airplanes by individual letters. This AD requires a visual inspection between wing Stations 96 and 131 of the wing upper skin top surface and lower surface above the main (center) spar upper cap for corrosion, and repair or replacement of the damaged parts, if necessary. This action was prompted by reports of corrosion found on the top surface of the inner wing top spar boom between Wing Stations 96 and 131. This condition, if not corrected, could result in structural failure of the wing.

EFFECTIVE DATES: September 6, 1988.

This AD was effective earlier to all recipients of Priority Letter 88-14-04, dated July 8, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113, telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On July 8, 1988, the FAA issued priority letter 88-14-04, applicable to British Aerospace (BAe) Viscount Model 700 and 800 series airplanes, which requires a visual inspection between Wing Stations 96 and 131 of the wing upper skin top surface and lower surface above the main (center) spar upper cap for corrosion, and repair or replacement of damaged parts, if necessary. That

action was prompted by reports of corrosion found on the top surface of the inner wing top spar boom between Wing Stations 96 and 131. This condition, if not corrected, could result in structural failure of the wing.

British Aerospace has issued Campaign Wire REF FSS/VIS/886135, dated June 30, 1988, which describes procedures for visual inspection between Wing Stations 96 and 131 of the wing upper skin top surface and lower surface above the main (center) spar upper cap for corrosion, and repair or replacement of damaged parts, if necessary. The United Kingdom Civil Aviation Authority (CAA) has classified the British Aerospace Campaign Wire as mandatory and has issued British Airworthiness Directive 001-07-88 to address this subject.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires visual inspections between Wing Stations 96 and 131 of the wing upper skin top surface and lower surface above the main spar upper cap for corrosion, and repair or replacement of damaged parts, if necessary, in accordance with the British Aerospace Campaign Wire described above. In addition, the FAA has determined that, since the unsafe condition addressed by this action concerns corrosion, the inspection must be repeated at 12-month intervals.

Following issuance of the Priority Letter AD, one operator inquired of FAA if the applicability of the AD intended to include the Viscount Model 810 as part of the "800 series airplanes." The FAA notes that the designation of "all Viscount Model 700 and 800 series airplanes" in the applicability statement includes *all* model numbers in those series (i.e., 744, 745, 810 series).

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The Federal Aviation Administration

has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, appropriate, will be prepared and placed in the regulatory docket (otherwise, and evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Viscount Model 700 and 800 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent structural failure of the wing, accomplish the following:

A. Within 7 days after the effective date of this AD, and thereafter at intervals not exceed 12 months, accomplish the following:

1. Visually inspect the right and left upper wing surface between Wing Stations 96 and 131 above the main (center) spar upper cap for evidence of corrosion, in accordance with British Aerospace Campaign Wire REF FSS/VIS/886135, date June 30, 1988. Signs of corrosion include lifting of the skin, loose fasteners, and corrosion stains around the fasteners.

2. Visually inspect the underside of the upper wing skin surface between Stations 96 and 131 both front and aft sides of the main (center) spar upper cap, both right and left wings, for evidence of corrosion, in accordance with British Aerospace Campaign Wire REF FSS/VIS/886135, dated June 30,

1988. This area is accessed through the main landing gear (MLG) bay.

B. If corrosion is found or suspected as result of the inspections required by paragraph A., above, prior to further flight, remove the wing upper skin between wing stations 96 and 131 for more thorough inspection for corrosion, and repair or replace corrosion-damaged structures, if necessary, in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 6, 1988.

It was effective earlier to all recipients of Priority Letter AD 88-14-04, issued July 8, 1988.

Issued in Washington, DC, on August 9, 1988.

Thomas E. McSweeney

Acting Director, Office of Airworthiness.

[FR Doc. 88-18538 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 176

[T.D. 88-47]

Customs Regulations Amendments To Correct Outdated References

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends § 176.21, Customs Regulations, by changing the reference to the Department of Justice office responsible for referring statements on agreed facts (stipulations) from the "Customs Section" to the "International Trade Field Office". It also corrects the zip code for that office by changing "10007" to read "10278".

The International Trade Field Office of the Department of Justice is responsible for referring statements on agreed facts (stipulations) which are to be used by the Department of Justice in submitting cases to the Court of International Trade to Customs officials for certification. These amendments are being made to prevent any confusion or undue delays in the preparation of, delivery to, or receipt of any such statements by the International Trade Field Office.

EFFECTIVE DATE: August 17, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel A. Pinkus, Assistant Chief Counsel, International Trade Litigation, U.S. Customs Service, 26 Federal Plaza, New York, New York 10278, (212) 269-9271.

SUPPLEMENTARY INFORMATION:

Background

Statements of agreed facts (stipulations) are used by the Department of Justice in submitting cases to the Court of International Trade. The office of the Justice Department which is responsible for referring stipulations to Customs officials for certification used to be known as the "Customs Section". It is now known as the "International Trade Field Office". Also, the zip code for the office has been changed to "10278" from "10007". Section 176.21, Customs Regulations (19 CFR 176.21), currently sets forth the outdated title and zip code of the office.

As part of its continuing program to keep its regulations current and thus serve the public better, Customs is amending § 176.21, Customs Regulations, in this document to correct the office title and zip code. These changes will prevent confusion and facilitate the receipt and delivery of statements to the International Trade Field Office.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly,

they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by the E.O. are not required.

Public Notice Requirement

Inasmuch as the amendments merely correct the office title and zip code which have changed since the regulations were initially issued, and neither impose any additional burdens on, or take away any existing rights or privileges from the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(2), a delayed effective date is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in Part 176

Courts.

Amendments to the Regulations

Part 176, Customs Regulations (19 CFR Part 176), is amended as set forth below.

PART 176—PROCEEDINGS IN THE COURT OF INTERNATIONAL TRADE

1. The authority citation for Part 176 continues to read as follows:

Authority: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624.

§ 176.21 [Amended]

2. Section 176.21 is amended by removing the words "Customs Section", and inserting in their place, the words "International Trade Field Office", and further, by removing the zip code "10007" and inserting in its place, the zip code "10278".

William von Raab,
Commissioner of Customs.

Approved: August 2, 1988.
Salvatore R. Martoche,
Acting Assistant Secretary (Enforcement).
[FR Doc. 88-18559 Filed 8-16-88; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 970

[Docket No. R-88-1407; FR-2463]

Public Housing Program; Demolition or Disposition of Public Housing Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This rule implements section 121 of the Housing and Community Development Act of 1987. Section 121 amends section 18 of the United States Housing Act of 1937, which governs the demolition and disposition of public and Indian housing. The provision combines two of the previous demolition criteria, so that demolition may be approved if the project is obsolete due to its physical condition, location, or other factors which make it unusable for housing and no reasonable program of modifications, such as rehabilitation, is feasible to return the project to useful life. Section 121 also provides that projects may not be demolished or disposed of, unless the public housing agency has developed a plan for the provision of an additional replacement unit for each unit involved. The plan must include a schedule for its completion (not to exceed six years); and HUD must, upon approving the plan, agree to commit the funds necessary to carry out it over the approved schedule, to the extent such funding is not provided from other sources (e.g., State or local programs or proceeds of disposition) and subject to availability of future appropriations. In addition, section 121 repealed a previous statutory provision which made section 18 inapplicable to conveyance of units under homeownership programs. This rule continues that inapplicability to units under certain homeownership programs.

DATES: *Effective date:* Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published.

announcing a specific effective date.
Comment due date: October 17, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nancy S. Chisholm, Director, Office of Policy, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6713. A telecommunications device for deaf persons (TDD) is available at (202) 472-6725. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

[Note: This interim rule makes changes, as discussed below, to the existing rule on demolition or disposition of public housing. Except for some minor editorial revisions and technical conforming changes, these changes reflect 1987 legislative amendments, also discussed below, and therefore are only the necessary amendments to the existing rule to implement the required statutory changes. Accordingly, commenters are requested to limit their comments to changes made as a result of the 1987 legislative amendments.]

Section 121 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) ("1987 Act") amended section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) ("1937 Act")—HUD's rules governing the demolition and disposition of public and Indian housing. The provision combined two of the criteria for demolition of public housing units, by requiring *both* that the project or portion of the project be obsolete as to physical condition, location, or other factors, making it unusable for housing purposes *and* that no reasonable program of modifications is feasible under the standards set forth in 24 CFR Part 968 (Comprehensive Improvement Assistance Program), to return the project or portion of the project to useful life. Before this statutory change, *either* criterion could be the basis for demolition of a project or portion of a project. The regulatory amendment for implementation of this statutory requirement can be found in § 970.6 of this rule.

The 1987 Act made no change in the alternative demolition criterion which is applicable to demolition of only a portion of a project; *i.e.*, where demolition will help to assure the useful

life of the remaining portion of the project (*e.g.*, selective demolition of units to reduce project density incident to comprehensive modernization of an older project).

Section 121 of the 1987 Act also mandated detailed requirements for a replacement housing plan for the provision of an additional decent, safe, sanitary, and affordable dwelling unit—on a one-for-one basis—for each public housing dwelling unit to be demolished or disposed of. Approval of an application for demolition or disposition requires a commitment for the funds necessary to carry out the plan. To the extent such funding is not provided from other sources (*e.g.*, State or local programs or proceeds of disposition), HUD approval of the application for demolition or disposition will be conditioned on HUD's agreement to commit, subject to availability of future appropriations, the funds necessary to carry out the plan in accordance with its approved schedule. Because of the responsibility imposed on HUD to commit the funds necessary to carry out the plan, a high degree of certainty with respect to State and local commitments is necessary.

The statutory requirements for the plan enumerate the following types of eligible replacement housing, to be used singularly or in any combination: (1) The acquisition or development of additional public housing dwelling units; (2) the use of 15-year project-based assistance under section 8, such as Moderate Rehabilitation under 24 CFR Part 882, Subparts D & E, and Project-Based Certificate Assistance under 24 CFR Part 882, Subpart G; (3) the use of not less than 15-year project-based assistance under other Federal programs, such as Housing Development Grants under 24 CFR Part 850; (4) the acquisition or development of dwelling units assisted under a State or local government program that provides for project-based assistance that is, in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years), comparable to assistance under section 8(b)(1) of the 1937 Act; or (5) any combination of such methods, or (6) the use of 15-year tenant-based assistance under section 8 (excluding vouchers under section 8(o)) which complies with specified statutory conditions as discussed below. Other examples of the types of housing that are acceptable replacement housing are Property Disposition projects with 15-year section 8 assistance and section 202/8 projects.

Based on projected appropriations for the sources of replacement housing listed above, the Department anticipates

that (1) the acquisition or development of additional public housing dwelling units and (2) the use of 15-year project-based assistance under section 8 will be the most available sources. Currently, there is no additional funding expected for the Housing Development Grant Program listed under (3) above, although acceptable sources may come from the section 202/8 program for eligible tenants. Sources from State and local government programs are also possible, if such programs meet the criteria specified above under (4). The use of 15-year tenant-based assistance under section 8 is questionable at this time, because of pending legislation which proposes to reduce the term of that type of assistance from 15 years to 5 years.

[Note.—The statutory restrictions on types of housing assistance that may be counted as replacement units do not apply to relocation. For example, tenants may relocate to other, existing public housing units, or to privately owned housing, with voucher assistance, as qualified below. The purpose of relocation is to assure that all displaced families obtain other suitable housing at affordable rents, while the purpose of one-for-one replacement is to assure that the total housing stock available is not diminished.]

Although section 121 of the 1987 Act prohibits the use of vouchers for replacement housing, the Department has determined that vouchers may be an acceptable relocation housing resource, provided the PHA can ensure that the rent paid by the displaced tenant following relocation will not exceed the amount permitted under section 3(a) of the 1937 Act. The rule further requires that the PHA be responsible for providing assistance to the displaced tenant in that regard and permits the PHA to use vouchers or certificates to ensure that the rent paid by the tenant does not exceed the amount permitted under section 3(a) of the 1937 Act. The rule states that the displaced tenant may, in any event, request a voucher under the section 8 Housing Voucher Program if it is of the tenant's choosing and the tenant understands that rent under the section 8 Housing Voucher Program may exceed the amount permitted under section 3(a) of the 1937 Act.

Despite the possible unlikelihood of section 8 tenant-based assistance being an acceptable replacement resource, as discussed above, the following statutory limitations on its use should be kept in mind:

The use of section 8 tenant-based assistance (Existing Housing certificates) for replacement housing requires a two-part finding by HUD that (1) project-based assistance is

infeasible, and (2) private rental housing is actually available to those who would be assisted under the plan and the supply of such housing is sufficient for the total number of certificates and vouchers available in the community and is likely to remain available for the full 15-year term of the assistance. Such finding should be based on objective information, such as the following statutory data elements: rates of participation by landlords in the section 8 program; size, conditions and rent levels of available rental housing as compared to section 8 standards; the supply of vacant existing housing meeting the section 8 housing quality standards with rents at or below the fair market rent, or the likelihood of adjusting the fair market rent; the number of eligible families waiting for public housing or housing assistance under section 8; and the extent of discrimination against the types of individuals or families to be served by the assistance.

To justify the two-part finding, the PHA must provide sufficient information to support both parts of the finding—why project-based assistance is infeasible and how the conditions and tenant-based assistance will be met, based on the pertinent facts of the particular local situation.

The determination as to infeasibility of project-based assistance must be based on the standards for feasibility stated in the regulations pertaining to each type of eligible project-based program identified in § 970.11, including public housing, as well as the other types of eligible Federal, State and local programs. Thus, a finding of infeasibility may be made only if the applicable feasibility standards could not be met under *any* of the eligible programs, or any combination of them. For example, with regard to the feasibility of additional public housing development, relevant factors would include local needs for new construction or rehabilitation, availability of suitable properties for acquisition or sites for construction, and HUD determinations under cost containment policies.

The second part of the finding—availability of housing for tenant-based assistance—is a matter of whether the facts concerning local need and housing supply justify such a finding. Above are listed the statutory data elements on which a finding should be based. HUD may require additional data as may be relevant in particular circumstances.

The 1987 Act also includes a requirement that the replacement housing plan contain a schedule for completing the plan, within a period consistent with the size of the proposed

demolition or disposition, but that the schedule shall in no event exceed six years. Other requirements contained in the Act are (1) that the plan be approved by the unit of general local government in which the project is located, (2) that the plan ensure that the rent paid by the tenant after relocation will not exceed that permitted under the Act, and (3) that there be no action to demolish or dispose of any unit until the tenant has been relocated to decent, safe, sanitary, and affordable housing that is, to the maximum extent practicable, of the tenant's choice. The rule also allows replacement with units of different sizes, after analysis of local needs, to accommodate changes in local priority needs, provided that at least the same total number of individuals and families may be accommodated.

Regulatory amendments implementing the statutory requirements discussed above can be found in §§ 970.4, 970.5, 970.6, 970.7, 970.8, of this rule and in a new § 970.11 relating specifically to the replacement housing plan requirements.

Paragraph (b) of § 970.5 is revised to specify in the last sentence, which states that the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 does not apply to displacement as a result of the activities covered by Part 970, that inapplicability goes only to disposition activities under Part 970. The Uniform Relocation Act Amendments of 1987, Pub. L. 100-27, amended the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to remove the exemption for relocation because of demolition of public housing. When implementing regulations for the Relocation Act Amendments are made final (approximately April 1989), they will be applicable to displacement from public housing as a result of demolition activities covered by Part 970. Pending effectiveness of the Relocation Act Amendments in April 1989, the exemption covering demolition and disposition activities as contained in the existing § 970.5 stands.

In addition to the regulatory amendments discussed above, § 970.2, Applicability, is amended to except from coverage of Part 970 homeownership sales under (1) section 21 of the 1937 Act (as added by section 123 of the 1987 Act), (2) the Turnkey III/IV and Mutual Help Homeownership Opportunity Programs, and (3) other homeownership programs, such as the Public Housing Homeownership Demonstration Program, and other homeownership programs established under sections 5(h) or 6(c)(4)(D) of the 1937 Act. (Section 21 pertains to homeownership programs through resident management

corporations.) Thus, the demolition/disposition regulations will be inapplicable to all conveyances for homeownership.

The Department has also determined that Part 970 should not apply to demolition or disposition of units deprogrammed before February 5, 1988 (the effective date of the 1987 Act). Units are deprogrammed for varying reasons, and because of this, the Department invites public comment concerning whether Part 970's requirements ought to be applied to some or all housing units deprogrammed after February 5, 1988, and in the future. This interim rule, by its silence, extends coverage to all units deprogrammed after February 5, 1988.

A technical correction is made to § 970.4(e) (redesignated by this rule as § 970.4(d)) to clarify that the requirements of environmental and historic preservation statutes applicable to the existing regulation also apply to the replacement housing plan required under the 1987 Act.

Editorial corrections are made to § 970.5 to reword the first sentence of paragraph (a) to state that "tenants who are to be displaced as a result of demolition or disposition shall be *relocated* to other decent, safe, sanitary and affordable housing * * * " (Emphasis supplied.)

In § 970.9, paragraph (b)(1) is amended to state that net proceeds (after payment of HUD-approved costs of disposition and relocation) shall be used for the retirement of outstanding obligations, *if any*, issued to finance original development or modernization of the project in recognition of the possibility that such obligations may have been forgiven. (See 42 U.S.C. 1437b.) Reference to the payment of development costs has been deleted because development cost is contained in the outstanding obligation, and double payment should not be implied.

A new § 970.12 is added which specifies the types of actions that may be permitted before approval of an application for demolition or disposition. The section mandates that a PHA may not take any action to demolish or dispose of a public housing project without obtaining HUD approval under Part 970, and that until such time, the PHA must continue to meet its obligations under the ACC as far as operation and maintenance of the project. However, approval is not required for planning activities, analysis, or consultations, such as viability studies, comprehensive modernization planning or comprehensive occupancy planning.

Other Matters

Justification for Interim Rule

Section 7(o) of the Department of Housing and Urban Development Act provides that no rule may become effective until after the first period of 30 calendar days of continuous session of Congress following its publication. Under the current congressional calendar, the Department must publish a final or interim rule no later than September 7, 1988, in order for it to become effective this calendar year. A final or interim rule published after that date must wait until Congress convenes in January 1989 for the 30 calendar days of session to run and would not become effective until mid-March 1989.

It is not feasible for the Department to develop a proposed rule, publish that proposed rule and provide a period for comment, and develop and publish a final rule, all by September 7, 1988. In the meantime, processing and approval of applications for demolition or disposition of public housing units, other than in the case of emergencies threatening the health or safety of tenants or of the community, have been suspended awaiting regulatory implementation of the 1987 Act requirements. Therefore, the Department has determined that it is both impracticable and contrary to the public interest to extend the developmental period for this rule by requiring public comment before its date of effectiveness. Accordingly, this rule is being promulgated as an interim rule to facilitate implementation of an effective rule this calendar year, while still providing for public comment. Public comment will be taken into account in a follow-up final rule.

Findings and Certifications

A Finding on No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major

increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation have been submitted to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule will have a significant economic impact on a substantial number of small entities because the 1987 Act provides for substantial contributions of funds by the Federal government to assist in bearing the costs associated with the policy changes reflected in the rule. This cost sharing will, of course, be available both to large and small PHAs whose demolition and disposition decisions are affected by the rule.

This rule was listed as item number 1023 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 970

Public housing.

Accordingly, 24 CFR Part 970 is amended as follows:

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

1. The authority citation for Part 970 is revised to read as follows:

Authority: Sec. 18, United States Housing Act of 1937 (42 U.S.C. 1437p); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 970.2, paragraph (c) is revised and a new paragraph (g) is added, to read as follows:

§ 970.2 Applicability.

(c) The conveyance of public housing for the purpose of providing homeownership opportunities for lower income families under Section 21 of the

Act, the Turnkey III/IV or Mutual Help Homeownership Opportunity Programs, or the Public Homeownership Demonstration Program or other homeownership programs established under section 5(h) or 6(c)(4)(D) of the Act.

(g) Units deprogrammed before February 5, 1988.

3. In § 970.4, paragraph (b) is removed, existing paragraphs (c), (d), and (e) are redesignated as (b), (c), and (d), and newly redesignated (d) is revised and a new paragraph (e) is added to read as follows:

§ 970.4 General requirements for HUD approval of applications for demolition or disposition

(d) Demolition or disposition (including any related replacement housing plan) will meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the National Historic Preservation Act of 1966 (16 U.S.C. 469), and related laws, as stated in the Department's regulations at 24 CFR Part 50.

(e) The public housing agency has developed a replacement housing plan, in accordance with § 970.11, and has obtained a commitment for the funds necessary to carry out the plan over the approved schedule of the plan. To the extent such finding is not provided from other sources (e.g., State or local programs or proceeds of disposition), HUD approval of the application for demolition or disposition is conditioned on HUD's agreement to commit the necessary funds (subject to availability of future appropriations).

4. Section 970.5 is revised to read as follows:

§ 970.5 Relocation of displaced tenants on a nondiscriminatory basis.

(a) (1) Tenants who are to be displaced as a result of demolition or disposition must be relocated to other decent, safe, sanitary, and affordable housing (at rents no higher than permitted under the Act,) which is, to the maximum extent practicable, housing of their choice, on a nondiscriminatory basis, without regard to race, color, religion (creed), national origin, handicap, age, or sex, in compliance with applicable Federal and State laws.

(2) Relocation may be to other publicly assisted housing, including housing assisted under section 8 of the Act and housing available as a result of the section 8 Housing Voucher Program, provided the PHA ensures that the rent

paid by the displaced tenant following relocation will not exceed the amount permitted under section 3(a) of the Act. The PHA shall be responsible for providing assistance to the displaced tenant in this regard and may use vouchers or certificates to ensure that the rent paid by the tenant does not exceed the amount permitted under section 3(a) of the Act. Nothing in this paragraph shall prohibit a displaced tenant from requesting a voucher under the section 8 Housing Voucher Program for use in a housing unit with rent that exceeds the amount permitted under section 3(a) of the Act, if such a unit is chosen by a displaced tenant who has been provided an opportunity to use housing voucher assistance in accordance with this paragraph.

(b) In addition to provision of relocation housing, assistance to all displaced tenants shall include assistance in finding other suitable housing, including payment of actual, reasonable moving costs, and counseling and advisory services to assure that full choices and real opportunities exist for tenants displaced from public housing scheduled for demolition or other disposition to select relocation housing in a full range of neighborhoods in which suitable relocation housing may be found, in and outside areas of minority concentration. Tenants to be displaced become eligible for assistance as of the date of receipt of an official notice to move. Pending the effectiveness of final rules to implement the 1987 amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("the URA"), the URA does not apply to displacement as a result of the disposition activities covered by this part.

5. Section 970.6 is revised to read as follows:

§ 970.6 Specific criteria for HUD approval of demolition requests.

In addition to other applicable requirements of this part, HUD will not approve an application for demolition unless HUD determines that one of the following criteria is met:

(a) In the case of demolition of all or a portion of a project, the project, or portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes and no reasonable program of modifications, in keeping with the Comprehensive Improvement Assistance Program (CIAP) regulations in 24 CFR Part 968, is feasible to return the project or portion of the project to useful life. Major problems indicative of obsolescence are—

(1) As to physical condition: structural deficiencies, substantial deterioration, or other design or site problems (e.g., severe erosion or flooding);

(2) As to location: physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review in accord with 24 CFR Part 50, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use;

(3) Other factors which have seriously affected the marketability, usefulness, or management of the property.

(b) In the case of demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project (e.g., to reduce project density).

6. In § 970.7, paragraph (a)(2) is revised to read as follows:

§ 970.7 Specific criteria for HUD approval of disposition requests.

(a) * * *

(2) Disposition will allow the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as lower income housing projects, and that will preserve the total amount of lower income housing stock available to the community. A PHA must be able to demonstrate to the satisfaction of HUD that the additional units are being provided in connection with the disposition of the property.

7. In § 970.8, paragraph (f) is revised to read as follows:

§ 970.8 PHA application for HUD approval.

(f) A replacement housing plan, as required under § 970.11, and a statement from the unit of general local government in which the project is located, indicating approval of the replacement plan.

8. In § 970.9, paragraph (b)(1) is revised to read as follows:

§ 970.9 Disposition of property; use of proceeds.

(b) * * *

(1) For the retirement of outstanding obligations, if any, issued to finance original development or modernization of the project; and

9. Section 970.11 is redesignated as § 970.13, and new §§ 970.11 and 970.12 are added, to read as follows:

§ 970.11 Replacement Housing Plan.

(a) HUD may not approve an application or furnish assistance under this part unless the PHA submitting the application for demolition or disposition also submits a plan for the provision of an additional decent, safe, sanitary, and affordable dwelling unit (at rents no higher than permitted under the Act) for each public housing dwelling unit to be demolished or disposed of under the application. The plan must include any one or combination of the following:

(1) The acquisition or development of additional public housing dwelling units;

(2) The use of 15-year project-based assistance under section 8 (as provided for in 24 CFR Part 882, Subpart G);

(3) The use of not less than 15-year project-based assistance under other Federal programs;

(4) The acquisition or development of dwelling units assisted under a State or local government program that provides for project-based assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years) to assistance under section 8(b)(1) of the Act; or

(5) The use of 15-year tenant-based assistance under section 8 of the Act (excluding vouchers under section 8(o)), under the conditions described in paragraph (b) of this section.

(b) Fifteen-year tenant-based assistance under section 8 may be approved under the replacement plan only if:

(1) There is a finding by HUD that replacement with project-based assistance (including public housing, as well as other types of project-based assistance under paragraph (a) of this section) is not feasible under the feasibility standards established for project-based assistance; that the supply of private rental housing actually available to those who would receive project-based assistance under the plan is sufficient for the total number of certificates and vouchers available in the community after implementation of the plan; and that this available housing supply is likely to remain available for the full 15-year term of the assistance; and

(2) HUD's findings under paragraph (b)(1) of this section are based on objective information, which must include rates of participation by landlords in the section 8 program; size, condition, and rent levels of available rental housing as compared to Section 8 standards; the supply of vacant existing housing meeting the section 8 housing quality standards with rents at or below the fair market rent or the likelihood of adjusting the fair market rent; the

number of eligible families waiting for public housing or housing assistance under Section 8; the extent of discrimination practiced against the types of individuals or families to be served by the assistance; and such additional data as HUD may determine to be relevant in particular circumstances.

(3) To justify a finding under paragraph (b)(1) of this section, the PHA must provide sufficient information to support both parts of the finding—why project-based assistance is infeasible and how the conditions for tenant-based assistance will be met, based on the pertinent data from the local housing market, as prescribed in paragraph (b)(2) of this section. The determination as to infeasibility of project-based assistance must be based on the standards for feasibility stated in the respective regulations which govern each type of eligible project-based program identified in paragraph (a) this section, including public housing under paragraph (a)(1) of this section as well as the other types of eligible Federal, State and local programs of project-based assistance under paragraphs (a)(2) through (4) of this section. A finding of infeasibility may thus be made only if the applicable feasibility standards cannot be met under any of those project-based programs, or any combination of them. For example, with regard to additional public housing development, feasibility would be determined by reference to Part 941 and any other applicable regulations and requirements, to include consideration of such factors as local needs for new construction or rehabilitation, availability of suitable properties for acquisition or sites for construction, and HUD determinations under cost containment policies. With regard to Section 8 programs involving rehabilitation, an example of a major feasibility factor would be the prospects for participation of private owners willing to meet the rehabilitation requirements.

(c) The plan must be approved by the unit of general local government in which the project is located.

(d) The plan must include a schedule for carrying out all its terms within a period consistent with the size of the proposed demolition or disposition, except that the schedule for completing the plan shall in no event exceed 6 years from the date specified to begin plan implementation.

(e) The plan must include a method which ensures that at least the same total number of individuals and families will be provided housing, allowing for replacement with units of different sizes

to accommodate changes in local priority needs.

(f) Where existing occupants will be displaced, the plan must include a relocation plan in accordance with §§ 970.5 and 970.8(d).

(g) The plan must prevent the taking of any action to demolish or dispose of any unit until the tenant of the unit is relocated in accordance with § 970.5. This does not preclude actions permitted under § 970.12, actions required under this part for development and submission of the PHA's application for HUD approval of demolition or disposition, or actions required to carry out a relocation plan which has been approved by HUD in accordance with §§ 970.5 and 970.8(d).

(h) The plan must include an assessment of the suitability of the location of proposed replacement housing based upon application of the Site and Neighborhood standards established at 24 CFR 941.202 (b), (c), and (d).

(i) The plan must contain assurances that any replacement units acquired, newly constructed or rehabilitated will meet the applicable accessibility requirements set forth in 24 CFR 8.25.

§ 970.12 Required and permitted actions prior to approval.

A PHA may not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining HUD approval under this part. Until such time as HUD approval may be obtained, the PHA shall continue to meet its ACC obligations to maintain and operate the property as housing for lower income families. This does not, however, mean that HUD approval under this part is required for planning activities, analysis, or consultations, such as project viability studies, comprehensive modernization planning or comprehensive occupancy planning.

Date: July 25, 1988.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-16497 Filed 8-16-88; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1295-88]

Organization of the Department of Justice

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending § 0.34(c) of Title 28 of the Code of Federal Regulations, which concerns the function and membership of a policy advisory group for INTERPOL-United States National Central Bureau. The amendment will create a Management Policy Group in INTERPOL with the discretion to convene an advisory group. Establishment of the Management Policy Group offers a more efficient and effective method of reviewing and developing INTERPOL programs and policies.

EFFECTIVE DATE: August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Jo Grotenrath, General Counsel, United States National Central Bureau, U.S. Department of Justice, Washington, DC 20530. Phone Number: (202) 272-8383. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: INTERPOL's initial policy advisory group was structured in a manner perceived at the time to be the most efficient and effective means of reviewing and developing INTERPOL programs and policies. In actual practice over the years, responsibility for the INTERPOL programs came to be centered in what is known as the Management Policy Group, which is described in greater detail below. Accordingly, the original structure and composition of the advisory group no longer adequately fulfills the anticipated needs.

The designated Management Policy Group, with the discretion to convene an advisory group, offers a more efficient and effective method of reviewing and developing INTERPOL programs and policies.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities. It is not a major rule within the meaning of Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Administrative practice and procedure.

Accordingly, 28 CFR Part 0 is amended to read as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*; 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*, 50 U.S.C.

App. 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Paragraph (c) of § 0.34 is amended by revising it to read as follows:

§ 0.34 [Amended]

(c) Serve as a member of a Management Policy Group to review and develop INTERPOL programs and policies. This Management Policy Group will include the designee of the Attorney General, who is the United States representative to INTERPOL, and the designee of the Secretary of the Treasury, who is the alternate representative to INTERPOL. The Attorney General's designee and the Secretary of the Treasury's designee may expand the Management Policy Group to include any U.S. Government official serving as an elected officer to INTERPOL, e.g., President, Vice President or Executive Committee Member. The Management Policy Group, at its discretion, may convene an advisory group comprised of the heads of the agencies or offices which are participating members of the United States National Central Bureau (USNCB), as necessary, to assist in the review and development of INTERPOL programs and policies. The Attorney General's designee representing the Department of Justice and the Secretary of the Treasury's designee representing the Department of the Treasury may submit any matter regarding INTERPOL-USNCB leadership or organization placement within the Department of Justice to the advisory group for resolution by a majority decision.

Date: August 8, 1988.

Edwin Meese III,
Attorney General.

[FR Doc. 88-18571 Filed 8-16-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 191

[DoD Directive 1440.1]

The DoD Civilian Equal Opportunity (EEO) Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part establishes the Civilian Equal Employment Opportunity (EEO) Program within the Department of Defense. It authorizes Special Emphasis Programs for women, minorities, and persons with disabilities and establishes

the Defense Equal Opportunity Council, the Civilian EEO Review Board, and Special Emphasis Program Boards. The purpose is to institutionalize EEO activities and consolidate guidance in a single document. This part affects applicants for employment within the Department of Defense as well as employees.

EFFECTIVE DATE: May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Claiborne D. Haughton Jr., Director for Civilian Equal Opportunity Policy, Department of Defense, 3A272, The Pentagon, Washington, DC 20301-4000. Telephone: (202) 695-0105 or AUTOVON 225-0105.

SUPPLEMENTARY INFORMATION: The Department of Defense last published 32 CFR Part 191 in the Federal Register on May 24, 1977 (42 FR 26422).

List of Subjects in 32 CFR Part 191

Equal employment opportunity, Government employees, Military personnel.

Accordingly, 32 CFR Part 191 is revised to read as follows:

PART 191—THE DOD CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM

Sec.

- 191.1 Purpose.
- 191.2 Applicability and scope.
- 191.3 Definitions.
- 191.4 Policy.
- 191.5 Responsibilities.
- 191.6 Procedures.
- 191.7 Civilian EEO program staff.
- 191.8 Defense equal opportunity council and EEO boards.
- 191.9 Information requirements.
- 191.10 Effective date.

Authority: 5 U.S.C. 301, 10 U.S.C. 113.

§ 191.1 Purpose.

This part:

(a) Implements the DoD Humans Goals Charter; 29 U.S.C. 791, 792, 793, and 795; guidance from the Equal Employment Opportunity Commission (EEOC); guidance from the Office of Personnel Management (OPM); Executive Order 11830; General Services Administration Order ADM 5420.71; Executive Orders 11141; 11246 Part II, 11375, and 12086; Office of Management and Budget (OMB) Circular No. A-11; 42 U.S.C. 2000E-16; Executive Order 11478; 38 U.S.C. 2014; 29 U.S.C. 631(b) and 633a; 5 U.S.C. Chapters 43 and 72; Secretary of Defense Policy on Sexual Harassment, July 17, 1981; Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) Multiple Addressee Memorandum, August 16, 1981; and 29 U.S.C. 206(d) by establishing the Civilian

Equal Employment Opportunity (EEO) Program, to include affirmative action programs, consistent with guidance from the Equal Employment Opportunity Commission (EEOC), Office of Personnel Management (OPM), and the DoD Human Goals Charter.

(b) Consolidates in a single document provisions of Secretary of Defense Multiple Addressee Memorandum, June 23, 1981; DoD Directive 1100.11, DoD Directive 1450.1, DoD Directive 5120.46, and DoD Directive 1100.15, therefore cancelling each document.

(c) Authorizes, as an integral part of the Civilian EEO Program, the establishment of Special Emphasis Programs (SEPs) entitled the Federal Women's Program (FWP), the Hispanic Employment Program (HEP), and the Handicapped Individuals Program (HIP), as well as, at the discretion of responsible officials, SEPs for the additional groups covered by the Federal Equal Opportunity Recruitment Program (i.e., the Asian/Pacific Islander Employment Program, the Black Employment Program, and the American Indian/Alaskan Native Employment Program).

(d) Establishes the Defense Equal Opportunity Council (DEOC), the Civilian EEO Review Board, the SEP Boards.

(e) Authorizes the issuance of DoD Instructions and Manuals to implement this part and guidance from standard-setting agencies such as EEOC and OPM, consistent with DoD 5025.1-M.

§ 191.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD) and activities supported administratively by OSD, the Military Departments, the Organization of the Joint Chiefs of Staff (as an element of the OSD for the purposes of this program), the Unified and Specified Commands, the Defense Agencies, the Army and Air Force Exchange Service, the National Guard Bureau, the Uniformed Services University of the Health Sciences, the Office of Civilian Health and Medical Programs of the Uniformed Services, and the DoD Dependents Schools (hereafter referred to collectively as "DoD Components").

(b) Applies worldwide to all civilian employees and applicants for civilian employment within the Department of Defense in appropriated and non-appropriated fund positions.

(c) Does not apply to military personnel, for whom equal opportunity is covered by DoD Directive 1350.2¹.

(d) Covers Federal employment issues under section 504 of the Rehabilitation Act of 1973, as amended, even though DoD Directive 1020.1² implements section 504 with respect to programs conducted and assisted by the Department of Defense. The standards established under section 501 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 791, 792, 793, and 795), are to be applied under section 504 of the Act with respect to civilian employees and applicants for civilian employment in Federal Agencies.

§ 191.3 Definitions.

Affirmative action. A tool to achieve equal employment opportunity. A program of self-analysis, problem identification, data collection, policy statements, reporting systems, and elimination of discriminatory policies and practices, past and present. Such a program does not contemplate and shall not include any preferential treatment of any person on the basis of race, color, national origin, religion, sex, age, or handicap.

Age. A prohibited basis discrimination. For purposes of this Directive, persons protected under age discrimination provisions are those 40 years of age or older, except when a maximum age requirement has been established by statute or the OPM. Aliens employed outside the limits of the United States are not covered by this definition.

Discrimination. Illegal treatment of a person or group based on race, color, national origin, religion, sex, age, or handicap.

Equal Employment Opportunity (EEO). The right of all persons to work and advance on the basis of merit, ability, and potential, free from social, personal, or institutional barriers of prejudice and discrimination. Equal employment opportunity is the objective of affirmative action programs.

Handicapped individual. A person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. For purposes of this Part, such term does not include any individual who is an alcoholic or drug abuser and whose current use of alcohol or drugs prevents such individual from performing the

duties of the job in question, or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or to the safety of others. As used in this paragraph:

(a) **Physical or mental impairment.** Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal and special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(b) **Major life activities.** Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) **Has a record of such impairment.** Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) **Is regarded as having an impairment.** Has:

(1) A physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation;

(2) A physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or

(3) None of the impairments defined above but is treated by an employer as having an impairment.

Minorities. All persons classified as black (not of Hispanic origin), Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native.

National origin. A prohibited basis for discrimination. An individual's place of origin or his or her ancestor's place of origin or the possession of physical, cultural, or linguistic characteristics of a national origin group.

Race. A prohibited basis for discrimination. For purposes of this part, all persons are classified as black (not of Hispanic origin), Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, and White, as follows:

(a) **Black (not of Hispanic origin).** A person having origins in any of the black racial groups of Africa.

(b) **Hispanic Origin.** A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race.

(c) **Asian or Pacific Islander.** A person having origin in any of the original

peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

(d) **American Indian or Alaskan Native.** A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

(e) **White.** A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Religion. Traditional systems of religious belief and moral or ethical beliefs as to what is right and wrong that are sincerely held with the strength of traditional religious views. The phrase "religious practice" as used in this Part includes both religious observances and practices. DoD Components are expected to accommodate an employee's religious practices unless doing so causes undue hardship on the conduct of the Component's business.

Sexual harassment. Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

(b) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting this person; or

(c) Such conduct has the purpose or effect interfering with an employee's performance or creating an intimidating, hostile, or offensive environment.

Special Emphasis Program (SEPs). Programs established as integral parts of the overall EEO program to enhance the employment, training, and advancement of a particular minority group, women, or handicapped persons.

Standard-setting agencies. Non-DoD Federal Agencies authorized to establish Federal Government-wide EEO policy or program requirements. The term includes the EEOC; OPM; DoL, Office of Federal Contract Compliance Programs (OFCCP); and OMB.

§ 191.4 Policy.

It is DoD Policy to:

(a) Recognize equal opportunity programs, including affirmative action programs, as essential elements of readiness that are vital to the accomplishment of the DoD national security mission.

(b) Develop and implement affirmative action programs to achieve

¹ Copies may be obtained if needed from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia PA 19120.

² See footnote 1 to § 191.2(c).

the objective of a civilian work force in which the representation of minorities, women, and handicapped individuals at all grade levels, in every occupational series, and in every major organization element is commensurate with the representation specified in EEOC and OPM guidance.

(c) Ensure that Civilian EEO Program activities for minorities, women, and handicapped individuals are integrated fully into the civilian personnel management system.

(d) Assess progress in DoD Component programs in accordance with the affirmative action goals of the Department of Defense.

(e) Prohibit discrimination based on race, color, religion, sex, national origin, mental or physical handicap, or age.

(f) Eliminate barriers and practices that impede equal employment opportunity for all employees and applicants for employment, including sexual harassment in the work force and at work sites and architectural, transportation, and other barriers affecting handicapped individuals.

§ 191.5 Responsibilities.

(a) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), or designee, shall:

(1) Represent the Secretary of Defense in all matters related to the DoD Civilian EEO Program, consistent with DoD Directive 5124.2³

(2) Establish and chair the DEOC.

(3) Establish a Civilian EEO Review Board.

(4) Develop policy and provide program oversight for the Civilian EEO Program.

(5) Ensure full implementation of this Part, monitor progress of affirmative action program elements, and advise the Secretary of Defense on matters relating to the Civilian EEO Program.

(6) Ensure that realistic goals that provide for significant continuing increases in the percentages of minorities, women, and handicapped individuals in entry, middle, and higher grade positions in all organizations and occupations are set and accomplished until the overall DoD objective is met and sustained.

(7) Prepare a new DoD Human Goals Charter each time a new Secretary of Defense is appointed.

(8) Ensure fair, impartial, and timely investigation and resolution of complaints of discrimination in employment, including complaints of sexual harassment.

(9) Establish DoD SEPs for the FWP, HEP, and HIP. In addition, the ASD (FM&P) shall have discretion to establish DoD SEPs for the additional groups covered by the Federal Equal Opportunity Recruitment Program (i.e., the Asian/Pacific Islander Employment Program, the Black Employment Program, and the American Indian/Alaskan Native Employment Program).

(10) Establish DoD Special Emphasis Program Boards to assist with implementation of SEPs under this Part.

(11) Establish DoD Civilian EEO Award Programs to provide for the annual issuance of Secretary of Defense Certificates of Merit to DoD Components and individuals for outstanding achievement in the major areas covered by this Part, and to review all awards and management training programs within the Department of Defense to ensure that minorities, women, and handicapped individuals receive full and fair consideration consistent with their qualifications and the applicable program criteria.

(12) Issue implementing instructions and other documents, as required, to achieve the goals of the DoD Civilian EEO Program and to provide policy direction and overall guidance to the DoD Components.

(13) Represent the Department of Defense on programmatic EEO matters with EEOC, OPM, the Department of Justice, other Federal Agencies, and Congress.

(14) Represent the Department of Defense on the Interagency Committee on Handicapped Employees under E.O. 11830, as amended, and the Interagency Committee for Computer Support of Handicapped Employees under General Services Administration Order ADM 5420.17.

(15) Represent the Department of Defense at meetings and conferences of non-Federal organizations concerned with EEO programs, and coordinate DoD support of such organizations' activities with the Assistant Secretary of Defense (Public Affairs) and with DoD General Counsel in accordance with DoD Directive 5410.18⁴, DoD Instruction 5410.19⁵, DoD Directive 5500.2⁶, and DoD Directive 5500.7⁷.

(16) Serve as the DoD liaison with the Office of Federal Contract Compliance Programs (OFCCP), Department of Labor (DoL), for the purpose of providing contract information, forwarding complaints of discrimination

filed against DoD contractors, and implementing administrative sanctions imposed against DoD contractors for violations of E.O. 11141; E.O. 11246; as amended by E.O. 11375, E.O. 12088; and DoL implementing regulations.

(17) Ensure that the DoD FAR Supplement contains appropriate contract provisions for EEO for Government contractors and subcontractors under Executive Orders 11141, 11246 Part II, 11375, and 12086; Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and DoL implementing regulations.

(b) The Heads of DoD Components, or their designees, shall:

(1) Ensure that all EEO policies are disseminated widely and that they are understood and implemented at all levels within their Components.

(2) Ensure that their Components comply with EEOC and OPM guidance and this Part and that minorities, women, and handicapped individuals receive full and fair consideration for civilian employment in all grade levels, occupations, and major organizations, with special emphasis on mid-level and higher grades and executive-level jobs, including the Senior Executive Service (SES) and SES candidate pools.

(3) Treat equal opportunity and affirmative action programs as essential elements of readiness that are vital to accomplishment of the national security mission.

(4) Designate a Director of Civilian Equal Opportunity and allocate sufficient staff and other resources to ensure a viable EEO program under this Directive. This includes assignment of staff to be responsible for EEO and affirmative action programs generally and SEP Managers for the SEPs established under this Part at the Component level.

(5) Establish SEPs for the FWP, HEP, and HIP. In addition, the Component Head shall have discretion to establish SEPs for the additional groups covered by the Federal Equal Opportunity Recruitment Program (i.e., the Asian/Pacific Islander Employment Program, the Black Employment Program, and the American Indian/Alaskan Native Employment Program).

(6) Require that EEO be included in critical elements in the performance appraisals of all supervisors, managers, and other Component personnel, military and civilian, with EEO responsibilities.

(7) Ensure fair, impartial, and timely investigation and resolution of complaints of discrimination in

⁴ See footnote 1 to § 191.2(c).

⁵ See footnote 1 to § 191.2(c).

⁶ See footnote 1 to § 191.2(c).

⁷ See footnote 1 to § 191.2(c).

³ See footnote 1 to § 191.2(c).

employment, including complaints of sexual harassment.

(8) Set realistic Component goals and motivate subordinate managers and supervisors to set and meet their own goals until overall DoD and Component goals are met and sustained.

(9) Evaluate employment policies, practices, and patterns within their respective Components and identify and correct and institutional barriers that restrict opportunities for recruitment, employment, advancement, awards, or training for minorities, women, and handicapped individuals; and ensure that EEO officers and civilian personnel officers provide leadership in eliminating these barriers.

(10) Ensure that installations and activities establish focused external recruitment programs to produce employment applications from minorities, women, and handicapped individuals who are qualified to compete effectively with internal DoD candidates for employment at all levels and in all occupations.

(11) Establish a continuing EEO educational program (including training in the prevention of sexual harassment) for civilian and military personnel who supervise civilian employees.

(12) Establish EEO Awards Programs to recognize individuals and organizational units for outstanding achievement in one or all of the major EEO areas covered by this Part.

(13) Review all award and management training programs to ensure that minorities, women, and handicapped individuals are considered, consistent with their qualifications and program criteria.

(14) At military installations having a civilian work force and military units, ensure that the Civilian EEO Program is managed by and conducted for civilian personnel only and that the Military Equal Opportunity Program is managed by and conducted for military personnel only. Any exceptions to this policy must be authorized by the Component head.

§ 191.6 Procedures.

(a) Officials designated in this Directive shall allocate resources necessary to develop methods and procedures to ensure that all elements of this Part are fully implemented and are in compliance with the spirit and intent of the DoD Human Goals Charter, laws, executive orders, regulatory requirements, and other Directive and Instructions governing the Civilian EEO Program within the Department of Defense.

(b) Heads of DoD Components, in accordance with EEOC and OPM guidance and subject to oversight by

and supplemental guidance from the ASD(FM&P), or designee shall:

(1) Develop procedures for and implement an affirmative action program for minorities and women, consistent with section 717 of the Civil Rights Act of 1964, as amended; E.O. 11478; guidance from EEOC; and guidance from OPM.

(2) Develop procedures for and implement an affirmative action program for handicapped individuals, consistent with section 501 of Rehabilitation Act of 1973, as amended, and guidance from EEOC.

(3) Develop procedures for and implement an affirmative action program for disabled veterans, consistent with DoD Directive 1341.6.⁸ This program shall be consistent with the program established in paragraph (b)(2) of this section and coordinated with the Component's HIP manager.

(4) Develop procedures for and implement systems for investigation and resolution of complaints of employment discrimination under section 717 of the Civil Rights Act of 1964, as amended; sections 501, 503, and 504 of the Rehabilitation Act of 1973, as amended and DoD Directive 1020.1; section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; the Age Discrimination in Employment Act of 1967, as amended; guidance from EEOC; and applicable case law.

(5) Develop procedures for and implement a Federal Equal Opportunity Recruitment Program for minorities and women and a comparable special recruitment program for handicapped individuals in accordance with the Civil Service Reform Act of 1978; EEOC instruction concerning affirmative action programs for handicapped individuals; guidance from OPM; external recruitment programs to obtain employment applications from minorities, women, and handicapped individuals who are competitive with internal DoD candidates for employment at all levels.

(6) Develop procedures for and implement all SEPs established under this part at the Component level. These SEPs shall be integral parts of the Civilian EEO Program and shall be conducted in accordance with the provisions of this Part and applicable EEOC and OPM guidance.

(7) Develop procedures for and implement a program to eliminate sexual harassment in Component work places, consistent with DoD Policy on Sexual Harassment memorandums, and

to ensure compliance with the Equal Pay Act.

(8) Develop procedures for and implement a program of employment preference for spouses of military personnel, in accordance with DoD Instruction 1404.11.⁹

(9) Develop procedures for and implement a selective placement program for handicapped individuals in accordance with guidance from OPM. This program shall be consistent with the program established in paragraph (b)(2) of this section, and coordinated with the Component's HIP manager.

(10) Develop procedures for and implement staffing initiatives, training and development programs, and upward mobility programs designed to increase the representation of qualified minorities, women, and handicapped individuals on certificates of eligibility and accompanying lists of individuals eligible for special appointments that are provided to selecting officials at all levels within the Component. These programs should include SES candidate programs and shall be targeted in career field in which there is underrepresentation and a likelihood of vacancies (e.g., science and engineering positions).

(11) Develop procedures for and implement a program to evaluate all supervisors and managers with EEO responsibilities on their contributions to and support of the Component's EEO program. Specifically, Component SES and General Manager personnel, when appropriate, shall have their EEO responsibilities defined as a critical element in their performance appraisals in accordance with the Civil Service Reform Act of 1978.

(12) Develop procedures for an implement a program to participate in and conduct ceremonies, where appropriate, at all levels of the Component to observe nationally proclaimed or other specially-designated community activities that particularly affect minorities, women, and handicapped individuals and that support the Civilian EEO Program. Military and civilian personnel should both participate whenever possible. Example of special observances include Dr. Martin Luther King Jr.'s Birthday, Black History Month, National Women's History Week, Women's Equality Day, Hispanic Heritage Week, National Employ the Handicapped Week, and the Decade of Disabled Persons.

(13) Develop procedures for and implement a program to revise documents and change practices and

⁸ See footnote 1 to § 191.2(c).

⁹ See footnote 1 to § 191.2(c).

policies that discriminate against civilian personnel on the basis of race, color, sex, religion, national origin, mental or physical handicap, or age.

(14) Develop procedures for and implement an affirmative action program for the continued Federal employment of minorities, women, and handicapped individuals who have lost their jobs in DoD Components because of contracting decisions made under OMB Circular No. A-76. (Under OMB Circular Federal employees have, in general, the right of first refusal of employment under these contracts.)

(15) Develop procedures for and implement a program for computer support of handicapped employees, consistent with DoD participation in activities of the Interagency Committee for Computer Support of Handicapped Employees in accordance with General Services Administration Order ADM 5420.71.

§ 191.7 Civilian EEO program staff.

(a) EEO Managers, including SEP Managers and other staff who are responsible for EEO and affirmative action programs, shall function at a level that is sufficiently responsible with the assigned organization to enable them to communicate effectively the goals and objectives of the program and to enable them to obtain the understanding, support, and commitment of managers and other officials at all levels within the organization.

(b) It shall be the responsibility of EEO Managers, SEP Managers, and other program staff to develop, coordinate, implement, and recommend to managers, other officials, and covered groups the policy, guidance, information, and activities necessary to attain the goals of the SEPs and the overall DoD Civilian EEO Program.

§ 191.8 Defense equal opportunity council and EEO boards.

(a) The DEOC shall be chaired by the ASD (FM&P) and shall coordinate policy for and review civilian and military equal opportunity programs, monitor progress of program elements, and advise the secretary of Defense on pertinent matters. One of the mandates of the DEOC shall be to pursue an aggressive course of action to increase the numbers of minorities, women, and handicapped individuals in management and executive positions at grades 13 and above, including the SES and, at the request of the Secretary of Defense, Schedule C, and other noncareer executive positions in the SES and on the Executive Schedule. Members of the DEOC shall include the assistant Secretary of Defense (Reserve Affairs)

and the Assistant Secretaries with responsibility for personnel policy and reserve affairs in the Military Departments.

(b) The Civilian EEO Review Board shall be chaired by the ASD(FM&P), or designee. The Board shall support the DEOC and shall be made up of designated EEO and personnel representatives from the DoD Components and such other individuals as may be necessary to carry out the work of the DEOC and implement this Part. The Board shall work with career management officials, other key management officials, and union representatives in developing policies, programs, and objectives.

(c) The DoD SEP Boards shall be chaired by the DoD SEP Managers. These Boards shall be comprised of designated SEP Managers from the DoD Components and such other individuals as may be necessary to advise and assist in EEO activities and policy development in the Department of Defense. The Boards shall work with career management officials, other key management officials, and union representatives in developing policies, programs, and objectives.

(d) The DEOC, Civilian EEO Review Board, and each SEP Board established at the DoD level shall have a Charter that describes its organization, management, functions, and operating procedures, consistent with DoD Directive 5105.18.¹⁰

(e) Civilian EEO Review Boards and SEP Boards may be established at Component, command, and installation levels as well as the DoD level to assist in program activities.

(f) Members of covered groups should be represented on Civilian EEO Review Boards, SEP Boards, and subcommittees at all levels; and consideration should be given to participation by military personnel and by Federal employees who are union representatives.

§ 191.9 Information Requirements

(a) The ASD(FM&P) shall:

(1) Submit an annual report to the Secretary of Defense on the status of the DoD EEO program. This report shall be developed from existing documents, such as affirmative action plan accomplishment reports, civil rights budget reports, semiannual discrimination complaint reports, and Federal Equal Opportunity Recruitment Program reports, plus statistical data obtained from the Defense Manpower Data Center and reports of visits to DoD installations.

¹⁰ See footnote 1 to 191.2(c).

(2) Submit a consolidated DoD annual report on actual and estimated expenditures for all civil rights programs to the OMB in accordance with OMB Circular No. A-11 and other OMB guidance.

(3) Submit consolidated DoD semiannual reports on discrimination complaints to the EEOC in accordance with EEOC guidance. This reporting requirement is assigned Interagency Report Control Number 0288-EEO-SA.

(b) Heads of DoD Components shall:

(1) Submit an annual report on actual and estimated expenditures for all Component EEO programs to the ASD(FM&P), or designee, in accordance with DoD 7110.1-M. This reporting requirement is assigned RCS DD-COMP (AR) 1092.

(2) Submit semiannual reports on discrimination complaints to the ASD(FM&P), or designee, in accordance with guidance from the EEOC. This reporting requirement is assigned Interagency Report Control Number 0288-EEO-SA.

(3) Submit copies of affirmative action program plan, affirmative action program plan updates, and affirmative action plan accomplishment reports for minorities, women, and handicapped individuals to the ASD(FM&P), or designee, in addition to copies of annual reports for the Federal Equal Opportunity Recruitment Program.

(4) Ensure that designated officials submit information for an annual report on computer support of handicapped employees and for reports on individual computer accommodations for handicapped employees. These reporting requirements are assigned RCS DD-FM&P (A) 1731 and RCS DD-FM&P (AR) 1732.

§ 191.10 Effective date.

This part is effective May 21, 1987.

Linda M. Bynum,
Alternate OSD Federal Register, Liaison
Officer, Department of Defense.
August 11, 1988.

[FR Doc. 88-18563 Filed 8-16-88; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 199

[DoD Regulation 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Updating CHAMPUS Prevailing Charges

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises the comprehensive CHAMPUS Regulation, DoD 6010.8-R (32 CFR Part 199), to allow the Secretary of Defense increased flexibility regarding the timing of updates to the prevailing charge levels which limit the amounts which are payable under CHAMPUS for professional services. This revision is in accordance with 10 U.S.C. 1079(h)(2), which permits the Secretary to adjust the base period for calculation of prevailing charges as frequently as he considers appropriate.

EFFECTIVE DATE: September 16, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the *Federal Register* containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the *Federal Register* is \$1.50 for each issue or for each group of pages as actually bound, payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Charles Gallegos, Chief, Office of Program Development, OCHAMPUS, telephone (303) 361-3005.

To obtain copies of this document, see the "Address" section above.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the *Federal Register* on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8-R was reissued in the *Federal Register* on July 1, 1986 (51 FR 24008).

I. Summary of Proposed Rule

On June 3, 1988, a proposed rule was published in the *Federal Register* (53 FR 20592) which offered the opportunity for public comment on the CHAMPUS proposal to increase the flexibility of the Secretary of Defense regarding the timing of updates to prevailing charge levels for CHAMPUS payments for professional services.

As was explained in the notice of proposed rulemaking, CHAMPUS currently reimburses professional services based on the allowable charge method, in which reimbursement is based on the lower of: (1) The billed charge for a service, or (2) the prevailing charge level that does not exceed the 80th percentile of billed charges for

similar services in the same locality during a base period.

Section 1079(h)(2), Chapter 55, Title 10, United States Code, permits the Secretary to adjust the base period for calculation of prevailing charges "as frequently as he considers appropriate." The CHAMPUS Regulation currently is less permissive than the Statute, requiring that the base period shall be adjusted annually, which means that prevailing charges are updated on an annual basis.

The Congressional intent behind the current statutory provision is that DoD have the flexibility to determine how often to update the prevailing charge levels based on all relevant circumstances. The major relevant circumstances that should be taken into account relate to the need to, on the other hand, responsibly constrain program cost growth, and on the other hand, maintain payment levels adequate to assure the availability of services to CHAMPUS beneficiaries.

Full consideration of both types of circumstances in determining the frequency of prevailing charge updates should take into account such factors as the rate of medical cost inflation. At times of high physician cost inflation, it is more important to have frequent updates so as to keep payment rates high enough to maintain very broad provider availability. At times of low physician cost inflation, however, frequent updates may have the effect of unnecessarily raising program costs by increasing payments even if not needed to maintain very widespread provider availability.

The current practice of automatic annual updates of the prevailing charge levels is not necessarily reflective of the most reasonable and appropriate balance between the two objectives of assuring broad provider availability and responsibly monitoring cost growth. Thus, the notice of proposed rulemaking concluded that it would appear reasonable and appropriate for DoD to have the flexibility to make the decision based on the actual circumstances presented.

II. Discussion of Comments

We received one comment in response to the proposed rule, from the American Medical Association (AMA). The AMA expressed general support for the proposal, but recommended that any variation from the 12-month timeframe for updates of prevailing charges should be subject to public comment.

Response: We agree, and have included in the final rule a requirement for a 30-day comment period following publication of a notice of intent to

depart from the general pattern of annual updates.

III. Summary of Final Rule

The final rule mirrors the proposed rule, with the exception of a new requirement for a 30-day comment period prior to any final decision by OCHAMPUS to depart from the general practice of annual updates to the prevailing charge levels.

As was stated in the notice of proposed rulemaking, this rule should not be mistaken as hinting a weakened DoD commitment to assuring for CHAMPUS beneficiaries the availability of a very broad range of physicians and other providers who will be perfectly willing to accept CHAMPUS allowable payment rates and will not "balance bill" beneficiaries for any unallowed balances. CHAMPUS now has a remarkable record in this regard, achieving an extraordinarily high level of provider claims paid as billed. In fact, it is estimated that only about four percent of all dollars billed for professional services provided to CHAMPUS beneficiaries are subject to balance billing to beneficiaries. DoD intends to maintain an excellent record in this regard.

Thus, to summarize, this final rule to build into the regulation the same flexibility as Congress established in the statute is intended to permit consideration of all relevant factors before any changes are made to the prevailing charge levels.

The proposed amendment affects § 199.14(f)(1)(i)(B)(2) of the CHAMPUS regulation as it appears in the Code of Federal Regulations, Title 32. The corresponding citation in the DoD directives system is DoD 6010.8-R, Chapter 14, Section F(1)(b)2.

IV. Other Regulatory Procedures

A. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not need to be reviewed by the executive authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

B. Regulatory Flexibility Act and E.O. 12291

This final rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

§ 199.14 [Amended]

2. Section 199.14(f)(1)(i)(B)(2) is revised to read as follows:

(2) The base period shall be a period of 12 calendar months and shall be adjusted at least once a year, unless the Director, OCHAMPUS, determines that a different period for adjustment is appropriate and publishes a notice to that effect in the *Federal Register*. Prior to publishing the final notice, a notice of intent shall have been published, which allowed a 30-day period for public comment on the proposed action.

August 12, 1988.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-18603 Filed 8-16-88; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 375

[DoD Directive 5122.5]

Assistant Secretary of Defense (Public Affairs)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The position of Assistant Secretary of Defense (Public Affairs), (ASD(PA)), is authorized under the provision of Title 10, United States Code with responsibilities, functions, and authorities as prescribed by the Secretary of Defense. As indicated in the subject Part, the ASD(PA) serves as the principal staff advisor and assistant to the Secretary of Defense for all facets of public information required within the Department of Defense.

This Part has been updated to reflect an organizational change within the Office of the ASD(PA). Based on a recommendation by an Office, Secretary of Defense study team which was required by the Goldwater-Nichols Act of 1986, the Defense Information Services Activity (DISA) was disestablished and its manpower and functions were transferred to the Office of the ASD(PA). This revision reflects the changes in organization and functions.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone (202) 697-1142.

SUPPLEMENTARY INFORMATION:**List of Subject in 32 CFR Part 375**

Organization and management.

Accordingly, 32 CFR Part 375 is revised to read as follows:

PART 375—ASSISTANT SECRETARY OF DEFENSE (PUBLIC AFFAIRS)**Sec.**

375.1 Reissuance and purpose.

375.2 Definition.

375.3 Responsibilities.

375.4 Functions.

375.5 Relationships.

375.6 Authorities.

375.7 Effective date.

Authority: 10 U.S.C. 136.

§ 375.1 Reissuance and purpose.

This part:

(a) Revises 32 CFR Part 375 and establishes, pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 136, one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Public Affairs) (ASD(PA)), with responsibilities, functions, and authorities as prescribed herein.

(b) Disestablishes the Defense Information Services Activity (DISA) and consolidates its functions into the Office of the Assistant Secretary of Defense (Public Affairs) (OSDA(PA)).

§ 375.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense (OIG, DoD), the Defense Agencies, and the DoD Field Activities.

§ 375.3 Responsibilities.

The Assistant Secretary of Defense (Public Affairs) ASD(PA) shall:

(a) Serve as principal staff advisor and assistant to the Secretary of Defense for DoD public information, internal information, the Freedom of Information act, mandatory declassification review and clearance of DoD information for public release, community relations, information training, and audiovisual matters.

(b) Ensure a free flow of news and information to the media, appropriate forums, the general public, and to the internal audiences of the Armed Forces, limited only by national security

constraints as authorized by E.O. 12356 and statutory mandates.

(c) Act as the releasing agency for DoD information and audiovisual materials to news media representatives. Evaluate news media requests for DoD support and cooperation and determine appropriate level of DoD participation.

§ 375.4 Functions.

The ASD(PA) shall:

(a) For each of the areas of responsibility cited in § 375.3.

(1) Develop policies, plans, and programs in support of DoD objectives and operations.

(2) Monitor evaluate, and develop systems, standards, and procedures for the administration and management of approved policies, plans, and programs.

(3) Issue policy guidance to DoD Components.

(4) As required, participate with the Comptroller of the Department of Defense in planning, programming, and budgeting activities.

(5) Promote coordination, cooperation, and mutual understanding among DoD Components and with other Federal, State, and local agencies and the civilian community.

(6) Serve on boards, committees, and other groups, and represent the Secretary of Defense outside of the Department of Defense.

(b) Conduct security reviews, consistent with E.O. 12356 and DoD Directives 5230.9¹ and 5400.4², of all material prepared for public release and publication originated by the Department of Defense, including testimony before congressional committees, or by its contractors, DoD employees as individuals, and material submitted by sources outside the Department of Defense for such review.

(c) Review for conflict with established DoD and national security policies or programs, official speeches, news releases, photographs, films, and other information originated within the Department of Defense for public release, or similar material submitted for review by other executive agencies of the U.S. Government.

(d) Oversee the provision of news analysis and news clipping services for the OSD, OJCS, and the Military Departments' headquarters.

(e) As required, prepare speeches, public statements, congressional

¹ Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120

² See footnote 1 to § 375.4(b)

testimony, articles for publication, and other materials for public release by selected DoD and White House officials.

(f) Serve as official point of contact for public and media appearances by DoD officials, and conduct advanced planning and coordination, as required, with private, public, and media organizations for such events.

(g) Receive, analyze, and reply to inquiries regarding DoD policies, programs, or activities that are received from the general public either directly or from other Government Agencies. Prepare and provide to the referring office replies to inquiries from the general public that are forwarded from the Congress and the White House.

(h) Evaluate and approve:

(1) Requests for DoD cooperation in programs involving relations with the public consistent with 32 CFR Parts 237 and 238.

(2) Requests by news media representatives or other non-DoD personnel for travel in military carriers for public affairs purposes.

(i) Establish policy for the Department of Defense Freedom of Information Act Program consistent with 5 U.S.C. 552 and 32 CFR Part 285.

(j) Direct and administer the Freedom of Information Act Program consistent with 32 CFR Part 285 and DoD Instruction 5400.10³ and the access portion of the DoD Privacy Act consistent with DoD Directive 5400.11 for the OSD, OJCS, and other DoD Components as may be assigned.

(k) Direct and administer the Mandatory Declassification Review Program consistent with E.O. 12356 and DoD Directive 5200.1⁴ for the OSD, OJCS, and other DoD Components as may be assigned.

(l) Exercise direction, authority, and control over the American Forces Information Service (AFIS) in accordance with 32 CFR Part 372. The policy and program responsibilities of AFIS include the following:

(1) Management of the DoD Internal Information Program.

(2) Armed Forces Radio and Television Service (AFRTS), consistent with 32 CFR Part 372a.

(3) DoD visual information and audiovisual activities, and joint visual information services, consistent with DoD Directives 5040.2⁵ and 5040.3.⁶

(4) DoD newspapers, including European and Pacific *Stars and Stripes*, and civilian enterprise publications, consistent with 32 CFR Part 297.

(5) DoD periodicals, consistent with 32 CFR Part 248.

(6) American Forces Press and Publications Service (AFPPS).

(7) DoD information training, to include providing policy guidance regarding the Defense Information School, consistent with DoD Directive 5160.48.⁷

(m) Provide DoD assistance to non-Government, entertainment-oriented motion picture, television, and video productions consistent with DoD Instruction 5410.16.⁸

(n) Evaluate and coordinate the DoD response to requests for speakers received by the Department of Defense and, as required, assist in scheduling, programming, and drafting speeches for the participation of qualified personnel.

(o) Perform such other functions as the Secretary of Defense may assign.

§ 375.5 Relationships.

(a) In the performance of assigned duties, the ASD(PA) shall:

(1) Coordinate and exchange information with DoD Components having collateral or related functions.

(2) Use existing facilities and services of the Department of Defense and other Federal Agencies to avoid duplication and achieve maximum efficiency and economy.

(3) Maintain liaison with and provide assistance to the general public, representatives of the news media, and private organizations seeking information relating to the activities of the Department of Defense.

(b) Heads of DoD Components shall coordinate with the ASD(PA) on all matters related to the functions cited in § 375.4.

§ 375.6 Authorities.

The ASD(PA) is hereby delegated authority to:

(a) Issue DoD Instructions, publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M, which carry out policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands regarding public affairs matters shall be issued directly to the Commanders of the Unified and Specified Commands. Instructions that

have operational implications shall be coordinated with the Chairman, Joint Chiefs of Staff (CJCS), consistent with DoD Directive 5105.35.⁹

(b) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 7750.5,¹⁰ as necessary.

(c) Communicate directly with DoD Components. The channel of communications with the Unified and Specified Commands regarding public affairs matters shall be between the ASD(PA) and the Commanders of the Unified and Specified Commands. Communications that have operational implications shall be coordinated with the CJCS consistent with DoD Directive 5105.35.

(d) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public.

(e) Establish arrangements for DoD participation in those non-DoD Government programs for which the ASD(PA) has been assigned primary staff cognizance.

(f) Act as the sole agent at the Seat of Government for the release of official DoD information for dissemination through any form of public information media.

(g) Establish accreditation criteria and serve as the approving and issuing authority for credentials for news gathering media representatives traveling in connection with coverage of official DoD activities.

(h) Approve military participation in public exhibitions, demonstrations, and ceremonies of national or international significance.

(i) In the absence of a known DoD originator of classified information, declassify official information submitted for security review, mandatory declassification review, and in response to Freedom of Information Act actions.

§ 375.7 Effective date.

This part is effective August 4, 1988.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

August 12, 1988.

[FR Doc. 88-18562 Filed 8-16-88; 8:45 am]

BILLING CODE 3810-01-M

³ See footnote 1 to § 375.4(b).

⁴ See footnote 1 to § 375.4(b).

⁵ See footnote 1 to § 375.4(b).

⁶ See footnote 1 to § 375.4(b).

⁷ See footnote 1 to § 375.4(b).

⁸ See footnote 1 to § 375.4(b).

⁹ See footnote 1 to § 375.4(b).

¹⁰ See footnote 1 to § 375.4(b).

ENVIRONMENTAL PROTECTION AGENCY**40 CFR PART 52**

[FRL-3425-9; KY-046]

Approval And Promulgation of Implementation Plans; Kentucky: Opacity Variance for TVA's Paradise Steam Plant**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA today approves an opacity variance for boiler Units 1 and 2 at Tennessee Valley Authority's (TVA's) Paradise Steam Plant. This variance was submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) on August 6, 1986. The opacity limitations approved for Units 1 and 2 are 61 percent and 50 percent, respectively. Testing under procedures agreed to by EPA and the Commonwealth of Kentucky has confirmed that both units can demonstrate compliance with the 0.11 pounds per million BTU (lbs/mm BTU) particulate emission limitation when the current 20 percent opacity standard of Regulation 401 KAR 61.015, Section 4(2), is exceeded. Today's approval makes the relaxed opacity limits federally enforceable.

DATES: This rule will become effective on September 16, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations.

U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Pamela E. Adams of the EPA Air Programs Branch at the above address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On August 6, 1986, Kentucky submitted to EPA a request for an opacity variance for Units 1 and 2 at TVA's Paradise Steam Plant in Muhlenberg County, Kentucky. This request was made in the form of a State Implementation Plan (SIP) revision so that the revised opacity

limits will be federally enforceable, and EPA will not enforce the limitations contained in Regulation 401 KAR 61.015. Opportunity for public participation and input relevant to this request was provided through a public hearing conducted on May 13, 1985, at the Capital Plaza Tower in Frankfort, Kentucky. Kentucky is requesting this opacity variance in accordance with the provisions of Regulation 401 KAR 50.055, Section 2(6). EPA proposed to approve this variance on August 24, 1987 (52 FR 31791). No comments were received in response to that proposal.

When boiler Units 1 and 2 are operated at normal full load with all associated emission control equipment optimized, TVA's Paradise Steam Plant is capable of complying with the 0.11 lbs/mmBTU particulate emission limitation but incapable of complying with the 20 percent opacity limitation of Regulation 401 KAR 61.015, Section 4(2), using EPA's Method 9. The TVA attributes the high opacity readings from Units 1 and 2 to nitrogen oxide (NO_x) formation associated with the boiler units rather than to particulate emissions.

Paradise Units 1 and 2 are identical crushed coal, cyclone-fired boilers. Due to the higher temperatures in the cyclones, these boilers produce twice as much NO_x as conventional pulverized coal-fired boilers. Units 1 and 2 are each equipped with an electrostatic precipitator and a wet limestone scrubber for emission control. The temperature of the flue gas leaving the scrubbers is reduced by approximately 125 degrees. Furthermore, oxygen is available within the scrubber units due to leakage and the addition of oxidizing air. These two factors result in more rapid conversion of nitrogen oxide to nitrogen dioxide (NO₂). Since NO₂ is a visible, brownish colored gas, TVA attributes the high opacity readings from Units 1 and 2 to this NO₂. Supporting this claim, TVA explains that Paradise Unit 3, which operates without a scrubber, does not produce high opacity emissions as do Units 1 and 2. In order to meet the requirements of Kentucky Regulation 401 KAR 50.055, Section 2(6), and establish the basis for an alternate opacity standard for Units 1 and 2, testing was conducted using procedures that were established in a "Compliance Test Protocol" mutually agreed upon by EPA and the Commonwealth of Kentucky.

On October 30 and 31, 1984, particulate stack tests were conducted on Unit 1 at the Paradise Steam Plant. Similar tests were conducted on Unit 2 at the plant on November 7 and 9, 1984.

The operating modes and testing procedures are discussed in detail in the Federal Register notice proposing approval of this opacity variance (52 FR 31791) and will not be repeated here. Testing determined the particulate emissions, visual opacity, and in-stack monitor opacity of boiler Units 1 and 2. Testing was performed by the Test and Performance Section of TVA. The tests were observed by representatives of the Kentucky Division of Air Pollution Control (KDAPC). Representatives of the Environmental Protection Agency observed the Unit 1 test.

Testing procedures were followed acceptably by TVA personnel, and the isokinetics for all six runs were within the acceptable range of 0.90 to 1.10. Results of the stack tests reveal that the actual particulate emission rate for both units was 0.04 lbs/mm BTU during testing. Identical mass particulate emissions from independent but identical units operated identically (optimized for maximum particulate emission control) show that the particulate emissions from Paradise Units 1 and 2 cannot be reduced below the measured 0.04 lb/mm BTU. These particulate emissions comply with the 0.11 lb/mm BTU standard. The Unit 1 average visual opacity reading value was 55 percent. The maximum six minute average reading observed during the stack tests was 61 percent. The in-stack monitor values corresponding to the times of the visual readings averaged 35 percent. The corresponding Unit 2 readings were 40 percent, 50 percent, and 38 percent respectively. For all test runs, the opacities (visual and monitor) exceeded the current 20-percent standard as the units operated under normal full load with all emission control equipment optimized.

The opacity limitations being approved in this notice for Units 1 and 2 of TVA's Paradise Steam Plant are 61 percent and 50 percent, respectively. These limitations were the highest recorded opacities for each unit during emission testing under procedures mutually agreed to by Kentucky and EPA. While EPA is approving these revised opacity limitations, EPA is uncomfortable with opacity variances since many factors can contribute to high opacities in each situation (e.g., NO_x, sulfur oxides, particulate, other sulfates). EPA is currently undertaking a study of high opacity situations and may recommend solutions other than opacity variances in the future.

Final Action: EPA is today finalizing approval of an opacity variance for TVA's Paradise Steam Plant boiler Units 1 and 2. This variance will allow 61

percent opacity according to EPA Method 9 for Unit 1 and 50 percent opacity according to EPA Method 9 for Unit 2. These proposed opacity limitations were the highest recorded for each unit during emission testing conducted with units operating under normal full load with all emission control equipment optimized. Both units can demonstrate compliance with the particulate emission limitation at these opacities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 17, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Date: August 1, 1988.

Lee M. Thomas,
Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.920 is amended by adding paragraph (c)(54) as follows:

§ 52.920 Identification of plan.

* * *

(c) * * *

(54) An opacity variance for boiler Units 1 and 2 of Tennessee Valley Authority's (TVA's) Paradise Steam Plant, submitted on August 6, 1986, by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) Permit No. 0-86-75, for the TVA Paradise Steam Plant, issued by the Kentucky Natural Resources and Environmental Protection Cabinet on July 24, 1986.

(B) Letter of August 6, 1986, from the Kentucky Natural Resources and Environmental Protection Cabinet.

(ii) Other material—none.

[FR Doc. 88-17802 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300189A; FRL-3430-7]

Montmorillonite-Type Clay Treated With Polytetrafluoroethylene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts montmorillonite-type clay treated with polytetrafluoroethylene (PTFE; CAS Reg. No. 9002-84-0) from the requirement of a tolerance when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest. This regulation was requested by Jellinek, Schwartz, Connolly, and Freshman, Inc., on behalf of Edward Lowe Industries, Inc.

EFFECTIVE DATE: Effective on August 17, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Kerry B. Leifer, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number:

Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of June 22, 1988 (53 FR 23421), which announced that Jellinek, Schwartz, Connolly, and Freshman, Inc., on behalf of Edward Lowe Industries, Inc., had requested that 40 CFR 180.1001 be amended by establishing an exemption from the requirement of a tolerance for montmorillonite-type clay treated with polytetrafluoroethylene when used as a carrier in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and

diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support this regulation.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the amendment to 40 CFR Part 180 will protect the public health. Therefore, the regulation is being established as set forth below.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the grounds for the objections. A hearing will be granted if the provisions of the regulation deemed objectionable and the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(c) * * *		
Inert ingredients	Limits	Uses
Montmorillonite-type clay treated with polytetrafluoroethylene (PTFE; CAS Reg. No. 9002-84-0).	PTFE content not greater than 0.5% (w/w) of clay.	Carrier.

[FR Doc. 88-18582 Filed 8-16-88; 8:45 am]

BILLING CODE 5560-50-M

40 CFR Part 271

[FRL-3429-8]

Mississippi; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final authorization.

SUMMARY: Mississippi has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Mississippi's application and has made a decision, subject to public review and comment, that Mississippi's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Mississippi's hazardous waste program revisions. Mississippi's application for program revision is available for public review and comment.

DATES: Final authorization for Mississippi shall be effective October 17, 1988, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Mississippi's program revision application must be received by the close of business September 16, 1988.

ADDRESSES: Copies of Mississippi's program revision application are available during normal business hours at the following addresses for inspection and copying: Mississippi Department of Natural Resources, 2380 Highway 80 West, P.O. Box 10385, Jackson, Mississippi 39209, U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460

Phone: 202/382-5926, U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; Phone (404) 347-4216. Written comments should be sent to Otis Johnson at the below address.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, 345 Courtland Street NE., Atlanta, Georgia 30365; Telephone No. 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6929(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-266 and 124 and 270.

B. Mississippi

Mississippi initially received final authorization of its hazardous waste program on June 27, 1984. On April 6, 1988, Mississippi submitted a final program revision application for non-HSWA requirements promulgated through June 6, 1986, and the HSWA requirement, State Availability of Information promulgated on November 8, 1984. Today, Mississippi is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Mississippi's application, and has made an immediate final decision that Mississippi's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to

Mississippi. The public may submit written comments on EPA's immediate final decision up until September 16, 1988. Copies of Mississippi's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Mississippi's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Mississippi has agreed that it will not use its variance authority granted under section 17-17-27(5) of the *Mississippi Code* in any manner that would render its Hazardous Waste Program less stringent. Procedures used by the State must be substantially equivalent to those used by EPA in granting exceptions or variances to Federal regulations. Concurrence is specifically required for changes in testing or analytical methods. Those State requirements that are more stringent than the Federal program may be relaxed through the variance procedure, provided that the final State requirement is not less stringent than the Federal requirement. The State agreed to transmit to EPA a copy of all variances granted within ten (10) days of approval of the variance. The State also agrees that it will provide the written assurance necessary upon completion of negotiation of the FY 1989 RCRA Subtitle C Grant, to be included in a signed Memorandum of Agreement between Mississippi and the Environmental Protection Agency.

To date, all RCRA hazardous waste management permits in Mississippi have been issued by the State under the authority granted to the State during previous authority. Therefore, there will be no change in the status of permits or permitting authority on the effective date of this rule. Mississippi is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

C. Decision

I conclude that Mississippi's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final

authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Mississippi is today seeking authority to administer the following Federal requirements promulgated prior to June 6, 1986.

Federal requirement	Federal promulgation date
Biennial Reports	Jan. 28, 1983.
Permit Rules—Settlement Agreement.	Sept. 1, 1983.
Interim Status Standards—Applicability.	Nov. 22, 1983.
Chlorinated Aliphatic Hydrocarbon Listing.	Feb. 10, 1984.
National Uniform Manifest	Mar. 20, 1984.
Permit Rules—Settlement Agreement.	Apr. 24, 1984.
Interim Status Standards—Applicability.	Nov. 21, 1984.
Corrections to Test Methods Manual.	Dec. 4, 1984.
Redefinition of Solid Waste	Jan. 4, 1984.
Interim Status Standards for Landfills.	Apr. 23, 1985.
Closure, Post-Closure and Financial Responsibility Requirements.	May 2, 1986.
Listing of Spent Pickle Liquor	May 28, 1986.
State Availability of Information—Section 3006(f).	Nov. 8, 1984.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Intergovernmental relations, Penalties, Reporting and

recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 14, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-18478 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

43 CFR Parts 5460 and 5470

[AA-230-07-6310-02; Circular No. 2610]

Sales Administration; Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This rulemaking adopts as final the interim amendments to 43 CFR Parts 5460—Sales Administration, and 5470—Contract Modification—Extension—Assignment. Those amendments concern the extension of time for cutting and removing contract timber in limited circumstances and conditions resulting from fires and other natural disasters.

EFFECTIVE DATE: November 5, 1987.

ADDRESS: Suggestions or inquiries should be sent to: Director (230), Bureau of Land Management, Department of the Interior, 1800 'C' Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Dave Estola, (503) 231-6837

or

Gary Ryan, (202) 653-8864.

SUPPLEMENTARY INFORMATION:

Disastrous fires in August and September, 1987, in southwestern Oregon damaged a volume of timber exceeding, in preliminary field estimates, a third of a billion board feet. In order to allow salvage of as much of the value of this damaged timber as possible, this rulemaking was published on an interim final basis on November 5, 1987 (52 FR 42586), effective the date of publication. The public was invited to comment on the rulemaking for 60 days ending January 4, 1988.

The Bureau of Land Management received 1 comment from a business entity. This letter raised several concerns as to implementation of the regulations, but offered no objection to the regulations themselves. Accordingly,

the interim final rulemaking published on November 5, 1987, is republished today without amendment to the regulatory language, effective on the date of original publication, November 5, 1987. The regulations in this rulemaking will be applied in all subsequent situations caused by natural or other disasters.

First, the comment suggested that the regulations should be implemented in a manner that does not distinguish between pre- and post-1982 timber sale contracts. This comment has already been adopted in Bureau implementation guidance for fire salvage extensions, which does not distinguish between contracts signed before and after 1982.

Second, the comment urged that extensions of BLM timber contracts should be allowed where purchasers harvest salvage timber from lands administered by the Forest Service. This comment will not be adopted. The Bureau has a unique timber receipt sharing arrangement with the western Oregon counties. Granting reciprocal extensions for Forest Service salvage sales would delay the collection of BLM timber receipts and cause an adverse impact on local economies.

Third, the comment suggested that extensions of BLM timber sale contracts should be allowed for the harvest of salvage timber from Federal lands lying beyond the purchaser's normal marketing area. This comment will not be adopted in implementation of these regulations. If extensions were granted without market area limitations, an abnormal market situation would be created. Purchasers holding expensive pre-1982 contracts would tend to bid on sales outside their usual market area in order to obtain extensions of their pre-1982 contracts, contrary to the public interest in completing those contracts so that the timber management program can continue in an orderly manner.

Finally, the comment suggested that § 5463.2(b) should be implemented in a manner allowing "pass-through" extensions from a non-manufacturing timber purchaser to an entity with milling capabilities. This comment is not adopted because pass-through extensions would have a doubling effect on the amount of extension credit, and would be difficult to administer. Under BLM regulations both companies in a pass-through situation would be entitled to extension credits, which would amount to a doubling of the credits.

The principal authors of this final rulemaking are Dave Estola, Oregon State Office, and Gary Ryan, Division of Forestry, Washington Office, assisted by the staff of the Division of Legislation

and Regulatory Management, Bureau of Land Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Bureau of Land Management sells timber valued at approximately \$100 million annually, but this rulemaking will affect only a minimal proportion of those sales, and not every year. The last incident to occur to which this proposed procedure would have been an appropriate response was 25 years ago. Also, all purchasers will be affected equally, regardless of size.

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 5460

Forest and forest products, Government contracts, Land Management Bureau, Public lands.

43 CFR Part 5470

Forest and forest products, Government contracts, Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

PARTS 5460 AND 5470—[AMENDED]

The interim rule amending 43 CFR Parts 5460 and 5470 which was published at 52 FR 42586 on November 5, 1987, is adopted as a final rule without change.

James E. Cason,

Deputy Assistant Secretary of the Interior.
July 11, 1988.

[FR Doc. 88-18575 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Part 8340

[Circular No. 2609; AA-340-08-4333-02]

Off-Road Vehicles; Clarifying Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations covering the use of off-road vehicles on the public lands. These regulations were issued by the Department of the Interior as proposed rulemaking and published in the Federal Register on July 17, 1987 (52 FR 27017) with a public comment period of 60 days. Three comments were received and considered during the development of this final rulemaking. This final rulemaking revises the regulations in 43 CFR Part 8340 to clarify some definitions used in the existing regulations and simplify the designation process.

EFFECTIVE DATE: September 16, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Assistant Director—Land & Renewable Resources (220), Bureau of Land Management, Room 5626, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Schneider, (202) 343-9353.

SUPPLEMENTARY INFORMATION: This final rulemaking amends the existing regulations for managing off-road vehicles on the public lands by making definitions more compatible with the actual on-the-ground experiences and with existing land use planning decisions, and eliminating the requirement for publication of a separate notice of off-road vehicle area designation in the Federal Register.

The proposed rulemaking was published in the Federal Register on July 17, 1987 (52 FR 27017), with a 60 day comment period. During the 60 day comment period, 3 comments were received from associations.

One commenter agreed that the wording of the proposed rulemaking simplified the wording of the existing regulations and expressed the hope that the revisions would provide for greater understanding and compliance among off-highway vehicle users.

Another commenter believed the changes did not reduce the BLM's ability to regulate use of off-road vehicles and correctly placed responsibility for the planning of such use within the Bureau's overall land use planning processes, but expressed concern with the lack of reference to a means of notifying the public regarding the designation of lands. The commenter felt that

voluntary compliance with closures and limits must be emphasized, and that such compliance is dependent upon awareness among recreationists about where their activities are inappropriate as well as appropriate.

Neither the proposed nor the final rulemaking have eliminated the notification of the public concerning designation of the public lands for off-road vehicles. Rather they have simplified the process by eliminating one step. As was discussed in the preamble of the proposed rulemaking, the identification, evaluation, and designation of public lands for off-road vehicle use is accomplished through the Bureau of Land Management's resource management (land use) planning process as described in 43 CFR Part 1600. This process also integrates the environmental impact statement and environmental assessment requirement of the Council of Environmental Quality's regulations (40 CFR Parts 1500-1508) that implement provisions of the National Environmental Policy Act. Both the Bureau's land use planning regulations and the Council of Environmental Quality's regulations provide for publication of advisory and descriptive Federal Register notices concerning the availability of all these documents for public review and input, making unnecessary the requirement for and expense of the separate notice required by the existing off-road vehicle regulations. And finally, the record of decision for each planning document discusses the off-road, vehicle designations. The public will receive adequate notice of the designations through these documents.

In addition to this concern, the commenter also recommended that consideration be given to changing the terminology for describing the vehicles from "off-road vehicles" to "off-highway vehicles" in a future amendment to the regulation. It was felt that this language would cover a wider range of recreational vehicles, would help eliminate the implication that all of these vehicles are designed solely for use off of existing roads and trails, which they are not, and would be consistent with the term many states now use in registering these vehicles. This recommendation has been noted by the BLM and a change in terms will be considered in a future revision of the regulations.

A final comment recommended that the proposed changes not be adopted. The commenter specifically took issue with the amendment of the first sentence of § 8341.2(a), objecting to the deletion of the words "or trails" from

the phrase "close the areas or trails affected". Two reasons were given for the objection. First, the commenter felt that it is difficult and perhaps impossible to identify all ORV trails and areas that are subject to designation in the BLM's resource management plans because the draft planning and environmental analysis documents do not always address route designations on a road by road basis. Furthermore, the commenter stated that the final Resource Management Plan and Environmental Impact Statement may be changed from the draft documents, and changes and oversights in route or area designations may go unnoticed until it is too late. Secondly, the identification of routes on the ground is more difficult where numerous routes exist. The commenter stated that since the BLM does not mark the routes subject to restrictions, it is nearly impossible in some heavily roaded areas to determine which routes are affected. In some cases this has resulted in the wrong routes being closed. The commenter concluded by stating that the present procedure is the best way for the public to participate in the ORV route designation process.

In reviewing this comment it was felt that a misunderstanding had occurred concerning the BLM's position and that a clarification is necessary. The designation process deals with areas, not individual roads and trails. If an area is closed, all roads and trails in that area are closed to off-road vehicle use. If an area is designated as limited, how the roads and trails are identified depends on the limitations placed on the area. For example, if an area designation is limited to "designated roads and trails", then those roads and trails designated for use will be identified on maps and on the ground as necessary. The change in the rulemaking does not preclude the identification of specific roads and trails for off-road vehicle use. It also does not change the public participation process used to identify which roads and trails would remain available for use but with a limited designation.

After considering the comments, it was decided to adopt, without change, the wording of the proposed rulemaking.

The principal author of this final rulemaking is Richard Traylor, Division of Recreation, Cultural, and Wilderness Resources, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the

quality of the human environment and that no detailed statements pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The changes made by this final rulemaking will benefit the using public in that they simplify and clarify the designation process. The changes will impact all users equally, whether large or small.

There are no information collection requirements in the changes made by this final rulemaking to 43 CFR Part 8340 which require approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 8340

Public lands, Recreation and recreation areas, Traffic regulations.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Taylor Grazing Act (43 U.S.C. 315a), the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 15, 1960, as amended (16 U.S.C. 670 *et seq.*), the Land and Water Conservation Fund Act (16 U.S.C. 4601-6a), the National Trails System Act (16 U.S.C. 1241 *et seq.*) and Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands) (37 FR 2877, 3 CFR Part 74, 332), as amended by Executive Order 11989 (42 FR 26959), Part 8340, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

James E. Cason,

Acting Assistant Secretary of the Interior.
July 20, 1988.

PART 8340—[AMENDED]

1. The authority citation for Part 8340 continues to read:

Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 4601-6a, 16 U.S.C. 1241 *et seq.* and 43 U.S.C. 1701 *et seq.*

2. Section 8340.0-5 is amended by revising paragraphs (f), (g) and (h) to read:

§ 8340.0-5 Definitions

* * * * *

(f) "Open area" means an area where all types of vehicle use is permitted at all times, anywhere in the area subject

to the operating regulations and vehicle standards set forth in Subparts 8341 and 8342 of this title.

(g) "Limited area" means an area restricted at certain times, in certain areas, and/or to certain vehicular use. These restrictions may be of any type, but can generally be accommodated within the following type of categories: Numbers of vehicles; types of vehicles; time or season of vehicle use; permitted or licensed use only; use on existing roads and trails; use on designated roads and trails; and other restrictions.

(h) "Closed area" means an area where off-road vehicle use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer.

§ 8341.2 [Amended]

3. Section 8341.2(a) is amended by removing from where it appears in the first sentence thereof the phrase "close the areas or trails affected" and replacing it with the phrase "close the areas affected".

4. Section 8342.2 is revised to read:

§ 8342.2 Designation procedures.

(a) *Public participation.* The designation and redesignation of trails is accomplished through the resource management planning process described in Part 1600 of this Title. Current and potential impacts of specific vehicle types on all resources and uses in the planning area shall be considered in the process of preparing resource management plans, plan revisions, or plan amendments. Prior to making designations or redesignations, the authorized officer shall consult with interested user groups, Federal, State, county and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have its views given consideration.

(b) *Designation.* The approval of a resource management plan, plan revision, or plan amendment constitutes formal designation of off-road vehicle use areas. Public notice of designation or redesignation shall be provided through the publication of the notice required by § 1610.5-1(b) of this Title. Copies of such notice shall be available to the public in local Bureau offices.

(c) *Identification of designated areas and trails.* The authorized officer shall, after designation, take action by marking and other appropriate measures to identify designated areas and trails so that the public will be aware of locations and limitations applicable

thereto. The authorized officer shall make appropriate informational material, including maps, available for public review.

[FR Doc. 88-18574 Filed 8-16-88; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 25

[CGD 87-016]

Emergency Position Indicating Radio Beacons for Uninspected Fishing, Fish Processing, and Fish Tending Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the uninspected vessel regulations by requiring emergency position indicating radio beacons (EPIRBs) to be carried on uninspected fishing, fish processing, and fish tender vessels operating on the high seas. The Coast Guard Authorization Act of 1986 amended the shipping laws of the United States by requiring those vessels to have the number and type of EPIRBs prescribed by regulation. By implementing the law, the regulations will ensure rapid and effective search and rescue during emergency situations.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: Between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, comments are available for inspection and copying at the Marine Safety Council (C-CMC) Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1477. The Final Evaluation may also be inspected or copies at the Marine Safety Council.

FOR FURTHER INFORMATION CONTACT: LCDR Stanford W. Deno, Survival Systems Branch, Room 1404, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1444. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On November 10, 1986, the Ninety-Ninth Congress passed Pub. L. 99-640, known as the "Coast Guard Authorization Act of 1986" (100 Stat. 3545). Section 16 of that Act amended Section 4102 of Title 46 of the United States Code by adding paragraph (e) which requires uninspected fishing, fish processing, and fish tender vessels operating on the high seas to carry the number and type of EPIRBs prescribed by regulation. This

Final Rule implements that law. A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on September 3, 1987 (52 FR 33448) and invited comments for a 45 day period ending October 19, 1987. On October 16, 1987, the comment period was extended for one month to expire on November 19, 1987. Notice of that extension was published in the Federal Register on October 22, 1987 (52 FR 39546). Twenty-six comments were received. Two comments expressed a general objection to the concept of requiring EPIRBs on fishing vessels, while eight comments generally supported the proposal. A discussion of the other, more specific comments follows.

Drafting Information.

The principal persons involved in drafting these regulations are: LCDR William M. Riley, Project Manager, and Mr. Stanley Colby, Project Counsel, Office of Chief Counsel.

Discussion

Definition of "high seas" Several comments asked for clarification of the term "high seas." In addition to the written comments, many telephone calls expressed confusion about the applicability of 3 mile, 12 mile, and 200 mile limits as well as the boundary lines for international and inland "rules of the road."

High seas are simply international waters as defined in 33 CFR 2.05-1(a); that is, waters which are neither U.S. territorial waters nor territorial waters of another country. The U.S. still claims only a 3-mile territorial waters boundary. The "12 mile limit" refers to the Contiguous Zone, a band of high seas within 9 miles of the territorial waters over which nations traditionally exert limited authority. Similarly, the "200 mile limit" refers to the Exclusive Economic Zone, a band of the high seas over which the U.S. unilaterally asserts authority to regulate fisheries and seabed mining under the Magnuson Fishery Conservation and Management Act, as amended (16 USC 1801, *et. seq.*)

Definition of "fishing vessel" A number of comments also requested definition of the term "fishing vessel." Three written comments and a significant number of telephone comments addressed this issue. Several asked whether pleasure boats engaged in sport fishing were considered "fishing vessels." Others asked whether small passenger vessels and party fishing boats were affected by these rules. One comment asked whether inspected small passenger vessels not carrying passengers for hire, but fishing commercially on a particular voyage,

would be affected. Another asked if "fishing" included clamming, dredging oysters, and catching shrimp.

"Fishing vessel," "fish processing vessel," and "fish tender vessel" are defined by law in 46 USC 2101. Recreational boats are regulated under 33 CFR Subchapter S. The regulations being amended, in Part 25 of 46 CFR Subchapter O, apply only to uninspected commercial vessels such as fishing boats and tugboats. Therefore pleasure boats are not affected. Small passenger vessels, carrying more than six passengers, are inspected under 46 CFR Subchapter T, and are therefore not affected by this rule. However, small passenger vessels temporarily operating as uninspected fishing vessels are subject to these rules. Commercial party fishing boats carrying six or less passengers for hire are uninspected and are regulated under 46 CFR Subchapter O. However, it is not the intent of these rules to require EPIRBs on such vessels, unless they too are operating temporarily to harvest fish rather than to carry passengers. The definition of "fish" (46 USC 2101(11)), which is applicable to uninspected vessels (46 USC Chapter 41), includes finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

Cost Five comments stated that the estimated cost of \$600 in the proposed rule for satellite EPIRBs was too low. Four of these comments included alternate costs estimates, ranging from \$1000 to \$2200. The most credible of these estimates was \$1450, from a manufacturer who intends to introduce a satellite EPIRB at that price. We believe this price will gradually decrease as other suppliers enter the market. The estimate of \$1450 has been accepted and incorporated into the Final Evaluation.

Phase-out period Sixteen comments addressed the proposed phase-out period for existing EPIRBs. Two comments supported the proposed 10-year phase-out period. Six comments supported the alternative proposal of 6 years contained in the preamble of the NPRM. Two comments suggested a period of 5 years. Three comments suggested a period of 3 years. One comment suggested a period of 2 years. Two comments objected to any phase-out period at all. Since the satellite EPIRBs are so far superior to the existing EPIRBs, and the existing EPIRBs are relating inexpensive, and there seems to be general support for a shorter phase-out period than 10 years, the final rule has been rewritten to include a 6-year phase-out period.

Existing Class A EPIRBs Several comments addressed a statement in the NPRM concerning the failure of up to 25% of existing 121.5/243 MHz Class A EPIRBs to meet FAA Technical Standard Order C-91a (TSO C-91a). Four comments stated that EPIRBs which do not comply with TSO C-91a should not be allowed. One comment stated that non-complying EPIRBs should be allowed in warm-water, near-shore fisheries. However, two comments asked how to identify a complying EPIRB, and two comments pointed out that no existing EPIRB is labeled to show it complies with TSO-C91a.

No existing EPIRB is certified by either the FCC or the Coast Guard as meeting TSO C-91a, since this FAA Technical Standard Order will apply only to future aircraft Emergency Locating Transmitters (ELTs). Therefore, the rules were not changed and no reference to TSO-C-91a has been added. Instead, the Coast Guard will take action, separate from this rulemaking process, to identify and withdraw the approvals of those Class A EPIRBs which do not operate reliably with the COSPAS/SARSAT satellite system because of inadequate frequency stability and power spectrum. This future action will be accomplished in accordance with 46 CFR 2.75-50(a).

Existing Class B and O EPIRBs Nine comments discussed the status of existing EPIRBs other than Class A during the phase-out period. One comment stated that any EPIRB purchased in good faith should be allowed. One comment stated that non-float-free EPIRBs should be allowed because of the risk of theft, washing overboard, or deterioration due to exposure. The remaining comments all stated that Class B and O EPIRBs were inferior and should not be allowed to replace a float-free EPIRB. Since the problems with Class B and O EPIRBs are acknowledged and there is little support for their continued use, no change has been made in the final rule to allow their use during the phase-out period.

Type acceptance Four comments called for more technical requirements for certification of EPIRBs to be included in these rules. These comments were rejected because the vessel requirements of 46 CFR Subchapter O do not include technical standards for equipment that must be approved. Satellite EPIRBs will be type accepted by the FCC, a process which includes Coast Guard review. The technical standards will be addressed in FCC rules. Therefore no change has been made in the final rule.

Registration Three comments suggested that these rules contain a requirement that the EPIRB be registered with NOAA to enable identification. Registration of the EPIRBs is expected to be required by FCC rules and need not be included in these rules.

Other radio equipment One comment stated that a VHF-FM radio should be required as a prerequisite to having an EPIRB. This rulemaking was intended to address only the implementation of 46 USC 4102(e) which only provides for EPIRBs. There is no indication that, in amending 36 USC 4102, Congress intended to broaden the Coast Guard's authority to require other radio equipment aboard uninspected fishing, fish processing, and fish tender vessels. Therefore this comment is rejected.

EPIRBs installed in inflatable liferafts One comment stated that EPIRBs in inflatable liferafts should only be permitted as optional equipment in addition to the required EPIRB, because they are exempt from testing under the rule. This is a misconception. Testing of the EPIRB in the inflatable liferaft is accomplished during annual servicing of the raft. In order to include an EPIRB in the equipment package of a Coast Guard approved inflatable liferaft, the raft manufacturer will have to incorporate instructions for testing and re-arming the EPIRB in the Coast Guard approved servicing manual for the raft. A Coast Guard approved servicing facility will have to follow the procedures in the manual when servicing the raft. For clarification, the Final Rule has been modified to except from the testing only those EPIRBs installed in rafts if they are Coast Guard approved and serviced annually by an approved facility. Section 25.26-1 requires the EPIRB to be float-free and automatically activated. If the EPIRB is in a float-free liferaft and the EPIRB is rigged to activate automatically when the raft floats free and inflates, then the EPIRB would satisfy these rules.

Testing and Servicing. One comment stated that the master should not be held responsible for testing because there is no longer a master on the document. Another comment agreed that the "owner/operator" should be responsible, adding that a log of tests should be kept on board. One comment stated that a battery test of the EPIRB was not enough, while another comment cautioned that the test should not involve radiating an actual signal. Both suggested language to the effect that the manufacturer's instructions be followed. One comment stated that monthly tests were too frequent because each test drains the battery, may result in a false

alarm, may result in improper resetting, and would be difficult to enforce. The Coast Guard did not accept these comments. None of the arguments were convincing. There is still a master of every vessel, who is responsible for its current condition and operation. "Operator" is a vague term. The Coast Guard anticipates that FCC will include procedures for the tests in the type acceptance standards. Proper testing should not wear out a properly designed EPIRB or its battery. Frequent testing will develop familiarity with test procedures and result in fewer mistakes such as false alarms and improper resetting.

Enforcement and penalties. One comment stated that a penalty for violation was not provided by the proposed rules. Penalties for violation of these rules are already provided by 46 USC 4106 and do not require rulemaking.

Availability of satellite EPIRBs Two comments expressed concern that the satellite EPIRB is a product that does not yet exist, may not work, and that fishing vessels should not be the first to have to try out the new technology. Satellite EPIRBs do exist, have been tested extensively by the COSPAS/SARSAT partners (US, USSR, France, and Canada), and do work. They are not commercially available in this country currently due chiefly to the absence of regulations requiring them or providing for their use. Necessary final rules permitting manufacture and sale of such beacons are expected to be completed by the FCC in the fall of 1988. The beacons should be readily available before mid-1989. To allow adequate time for installation of satellite EPIRBs, the final rule establishes a compliance date one year after the effective date. The Coast Guard will continue to consult with the FCC and manufacturers and will adjust the compliance date, if necessary, to allow approximately six months for installation of satellite EPIRBs after the units are readily available. If production is delayed, adjustments to the compliance date will be made and published in the Federal Register. Availability of the technology now coincides with the Coast Guard's newly obtained authority to require EPIRBs on fishing vessels. The Coast Guard's position is that it is preferable to require the prompt installation of EPIRBs having superior performance, rather than to require fishing vessels to install an inferior EPIRB now, then go through a costly replacement program at some later date.

Regulatory evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the docket. It may be inspected or copied at the Office of the Marine Safety Council (see "ADDRESSES", above).

The final evaluation uses a cost estimate of \$1450 for each of the estimated 31,555 fishing vessels that would be affected. This revised cost estimate is based on the comments received on the NPRM, and is believed to be higher than the actual cost which will be achieved through volume production. The arbitrarily high figure has thus been used as a conservative basis for the evaluation. Approximately half of the affected vessels would have to install satellite EPIRBs within a year, at a cost of about \$22.9 million. The remainder would replace their existing conventional EPIRBs over a 5-year period at a cost, adjusted to 1988 dollars, of about \$19.8 million, for a total of about \$42.6 million for the industry to comply with the requirements in the rules in a 6-year period.

In addition to the saving of lives, primary benefits of the regulations include more timely notification to the authorities that a casualty has occurred and more accurate identification of the object of the search and the area to be searched, which should contribute to large savings of money for the Coast Guard and other organizations involved in a search.

In the three-year period from 1982 to 1984, 288 lives were lost as a result of total losses of fishing vessels. Although the number of lives that may be saved through mandatory EPIRB requirements cannot be predicted, using the minimally accepted value of a human life of one million dollars, the saving of only a few lives each year would justify the cost of these rules.

More tangible benefits can be identified in the reduction of search and rescue costs. The search for the fishing vessel AMAZING GRACE took 16 days and cost \$12 million before the search was abandoned. There was no definite notice that a casualty had occurred, and the area to be searched was unknown. In contrast, a number of searches for pleasure vessels and fishing vessels have been expedited by EPIRBs carried voluntarily. The savings to the government as a result of elimination or significant reduction of only three or four large-scale searches would justify the cost of these rules, even without

considering the lives that may be saved by more timely location of vessels in distress.

The Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Generally, fishing vessel operators are considered to be small entities in that they are typically not part of large diversified corporations, and generally own no more than a few vessels. The \$1450 cost is not considered significant for any of these vessels. As recognized by the phase-out period for existing EPIRBs, when properly maintained, these units have a long useful life.

It has been determined that this rulemaking is categorically excluded from detailed environmental evaluation. The Categorical Exclusion Determination is available in the docket for examination, copying, and public comment. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

List of Subjects in 46 CFR Part 25

Fire prevention, Marine safety.

In consideration of the foregoing, Subchapter C of Title 46, Code of Federal Regulations, is amended as follows:

PART 25—[AMENDED]

1. By revising the authority citation to Part 25 to read as follows:

Authority: 46 U.S.C. 4104 and 4302; 49 CFR 146.

2. By amending Part 25 by adding a new Subpart 25.26 to read as follows:

Subpart 25.26—Emergency Position Indicating Radio Beacons

Sec.

25.26-1 Uninspected Fishing, Fish Processing, and Fish Tender Vessels.
25.26-5 Servicing of EPIRBs.

Subpart 25.26—Emergency Position Indicating Radio Beacons

§ 25.26-1 Uninspected Fishing, Fish Processing, and Fish Tender Vessels.

(a) After August 17, 1989, the owner of an uninspected vessel that is a fishing vessel, a fish processing vessel, or a fish tender vessel shall ensure that the vessel does not operate on the high seas, as defined in 33 CFR 2.05-1(a), unless it has on board—

(1) an FCC Type Accepted Category 1, float-free, automatically activated, 406

MHz Emergency Position Indicating Radio Beacon (EPIRB); or

(2) a 121.5/243 MHz Class A EPIRB meeting paragraph (b) of this section.

(b) Until August 17, 1994, a Coast Guard approved 121.5/243 MHz Class A EPIRB may be on board a vessel, under paragraph (a) of this section, if the EPIRB is operable and installed on the vessel on or before October 3, 1988.

§ 25.26-5 Servicing of EPIRBs.

(a) The master of each vessel required to have an EPIRB under this subpart shall ensure that each EPIRB on board is tested and serviced as required by this section.

(b) The EPIRB must be tested by the visual or audio output indicator to determine whether or not it is operating immediately after installation and at least once each month thereafter, unless it is an EPIRB installed in a Coast Guard approved inflatable liferaft that is tested annually during the servicing of the inflatable liferaft by an approved facility. If the EPIRB is not operating, it must be repaired or be replaced with an operating EPIRB.

(c) The battery of the EPIRB must be replaced—

(1) Immediately after the EPIRB is used for any purpose other than being tested; and

(2) Before the expiration date that is marked on the battery.

Dated: March 22, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88-18628 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-14-M

Office of the Secretary

48 CFR Part 1252

[Docket No. 45256; Amdt. 3-3]

Acquisition Regulations; Correction

AGENCY: Office of the Secretary, DOT.

ACTION: Correction notice.

SUMMARY: This rule makes editorial corrections to the recently published final rule which effected the republication of the Department's Transportation Acquisition Regulation (TAR) (48 CFR Chapter 12). The final rule was published in the Federal Register on Thursday, July 28, 1988 (53 FR 28396) and will be effective on August 29, 1988.

DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Charles Ventura at 400 Seventh Street SW., Room 9100, Washington, DC 20590, phone number (202) 366-4271.

SUPPLEMENTARY INFORMATION: The final rule amending 48 CFR Chapter 12, was preceded by an interim final rule which was published at 52 FR 44522 on November 19, 1987. The final rule made changes to several clauses included in Part 1252 of 48 CFR Chapter 12. The final rule inadvertently cited the incorrect effective dates for these changed clauses. The changed clauses should be dated "August 1988" to reflect the same effective date as the final rule itself. This notice indicates the correct dates for the clauses which were changed.

List of Subjects in 48 CFR Chapter 12

Government procurement.

This correction notice is issued under delegated authority under 49 CFR Part 1.59(q).

Dated: August 11, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Accordingly, the Department of Transportation makes corrections to 48 CFR Chapter 12 as follows:

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1252.207-70 [Corrected]

1. Section 1252.207-70 is corrected by changing the effective date for both TAR clause 1252.207-70, Implementation of Right of First Refusal of Employment, and its Alternative to read "(Aug 1988)."

1252.215-72 [Corrected]

2. Section 1252.215-72 is corrected by changing the effective date for TAR clause 1252.215-72, Cost Proposal Instructions, to read "(Aug 1988)."

1252.222-70 [Corrected]

3. Section 1252.222-70 is corrected by changing the effective date for TAR clause 1252.222-70, Service Contract Act of 1965—Contracts of \$2,500 or Less, to read "(Aug 1988)."

1252.222-75 [Corrected]

4. Section 1252.222-75 is corrected by changing the effective date for TAR clause 1252.222-75, Service Contract Act of 1965 as Amended, to read "(Aug 1988)."

1252.245-70 [Corrected]

5. Section 1252.245-70 is corrected by changing the effective date for TAR

clause 1252.245-70, Government Property Reports, to read "(Aug 1988)." [FR Doc. 88-18617 Filed 8-16-88; 8:45 am] BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 25]
RIN 2127-AC45

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This notice amends the specifications for gasoline, tar remover, and power steering fluid, used in the chemical resistance test for replaceable bulb headlamps with plastic lenses. After consideration of comments received in response to a proposal published in March 1987, the agency is adopting through incorporation by reference ASTM Reference Fuel C as the specification for gasoline. Tar remover is to consist by volume of 45% xylene and 55% petroleum base mineral spirits. The power steering fluid used in the test is to be that specified by the vehicle manufacturer for use in the vehicle on which the headlamp is intended to be installed. The reason for the restated test fuels is that the original specification for gasoline failed to take into consideration the existence and concentration of aromatic hydrocarbons, the specification for tar remover could be clarified, and that the composition of power steering fluid differed from vehicle to vehicle. The effect of the amendment is that Reference Fuel C will be more representative of unleaded gasoline in the chemical resistance test. Tar remover will have the composition of that used in the Canadian standard and will promote international harmonization. Power steering fluid will be that recommended for use in the vehicle by its manufacturer, that fluid being the most likely type of power steering fluid to contact the headlamp of the vehicle.

DATE: The effective date of the rule is September 16, 1988. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 16, 1988.

ADDRESS: Petitions for reconsideration of the rule should refer to the docket number and notice number, and must be

addressed to the Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION: On March 18, 1987, NHTSA published Notice 22 to Docket 81-11 (52 FR 8482) in which it granted and denied several petitions for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*. One of these petitions was filed by Ford Motor Company, and related to aspects of the chemical resistance tests for replaceable bulb headlamps with plastic lenses. In Ford's view, the definitions of gasoline and tar remover, two of the fluids prescribed for the tests, were imprecise. The agency agreed with Ford; and granted its petition, although it did not concur with the definitions that Ford recommended as substitutes.

For the reasons given in Notice 22 NHTSA proposed that the composition of the previously specified unleaded gasoline of 89 octane or above be 47% toluene, 3% benzene, and 50% iso-octane. It proposed that tar remover consist by volume of 45% xylene and 55% petroleum base mineral spirits. The agency had also tentatively concluded that power steering fluid should be clarified to mean the fluid recommended by the vehicle manufacturer for use in the vehicle now which the headlamp was intended to be installed.

Six commenters responded to the proposal: Ford, General Motors Corporation, Chrysler Corporation, Volkswagen of North America, ETL Laboratories, Inc., and Corning. The commenters either supported or were silent regarding the proposed composition of tar remover. Therefore, this composition (identical to that specified by Canada in its chemical resistance test) has been adopted. Xylene is found in most gasoline, and because NHTSA's proposed gasoline test fluid composition does not include xylene, it was deemed desirable to have some testing with fluid containing xylene.

GM and Chrysler supported the proposal regarding power steering fluid. Ford, however, commented that it saw no safety need for the fluid's inclusion in the standard, but that if it were to be specified, its elements ought to be representative of power steering fluids, as a surrogate for actual fluids. However, power steering fluids differ significantly in their compositions, and some manufacturers, e.g., Honda,

recommend that operators use only one specific fluid and none other to avoid damaging the power steering system. Other manufacturers recommend a specific fluid but mention an allowable substitute. This has led NHTSA to conclude that the power steering fluid to be used in the chemical resistance test must be that recommended for use in the vehicle, Ford's comment notwithstanding. No commenters, other than Ford, objected to this proposal. Power steering fluid reservoirs in some instances are located near a headlamp. The fluid is subject to spillage and overflow under pressure or when overheated with heat from the engine. After considering these comments, the agency is amending the requirement to specify that the fluid used in the test is the power steering fluid recommended by the vehicle manufacturer for use in the vehicle on which the headlamp is to be installed.

The composition of gasoline occasioned the most comment. NHTSA had proposed a fuel composed of 47% toluene, 3% benzene, and 50% iso-octane. Ford continued to support ASTM Reference Fuel D (40% toluene, 60% iso-octane). Chrysler and GM suggested ASTM Reference Fuel C (50% toluene, 50% iso-octane). ETL was in favor of "gasoline the consumer uses" on the basis that it provides a "real world" test. Volkswagen advised against use of a formula that might become quickly outdated. Corning urged adoption of two or more formulas that would represent the extremes of composition.

The agency has decided to adopt ASTM Reference Fuel C, as recommended by GM and Chrysler. The composition is substantially similar to that proposed by NHTSA, and eliminates benzene, a toxic fluid determined to be a carcinogen. Reference Fuel C is a standard solvent used primarily for testing the effect of liquids on rubber. An octane number is irrelevant for its use and has not been adopted. Aromatic hydrocarbons (which include both toluene and benzene) are the active ingredients of gasoline which are likely to attack plastic materials upon exposure. NHTSA believes that the percentage (by volume) of aromatic hydrocarbons in the gasoline test fluid should correspond approximately to the maximum percentage found in commercially available unleaded high octane gasoline. In adopting Reference Fuel C, the agency rejects a suggestion by Ford for specifying a fluid with 40% toluene and 60% iso-octane (ASTM Reference Fuel D). In its comment, Ford said that a 40% level of toluene, an

aromatic hydrocarbon, was selected as representative of a level more stringent than that found in 97% of commercially available gasoline. The agency believes that the stringency of the test fluid should be referenced to the level found in unleaded gasolines, rather than that found in all commercially available gasoline. Hence, a level more stringent than that found in approximately 97% of unleaded gasoline with 89 or greater octane is deemed appropriate. The 97% figure is in accord with that suggested by Ford. In its comments, Ford stated that data obtained in the MVMA Gasoline Survey for the 1983 Winter Season resulted in an average value (mean) of 33.6% aromatic hydrocarbons and a standard deviation of 8.4% for premium unleaded gasoline. Extrapolating that data with the use of standard statistical methods leads to the conclusion that 50.4% (33.6 + 2(8.4)) level of aromatic hydrocarbons would equal or exceed the level found in 97% of commercially available premium unleaded gasoline. Thus, the use of ASTM Reference Fuel C, with 50% toluene, is deemed appropriate. ETL's suggestion to use commercially available gasoline was not adopted because the instability of hydrocarbons in gasoline between the time the fluid is removed from the tank and the time it is used in compliance testing was the basis for the agency's conclusion that a different fuel was required.

The final rule incorporates ASTM Reference Fuel C as specified in ASTM D 471-79 *Standard Test Method for Rubber Property—Effect of Liquids* used as specified in Annex 2 to Motor Fuels Section 1 *Test Methods for Rating Motor, Diesel, Aviation Fuels*, 1985 Annual Book of ASTM Standards. This material has been submitted to the Director of Federal Register for approval by the effective date of the rule, in accordance with regulations of both the Federal Register and NHTSA (5 USC 552(a) and 1 CFR Part 51, and 49 CFR 571.5(a) respectively).

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. The rule neither imposes any additional requirements nor alters the cost impacts of requirements already adopted.

NHTSA has also analyzed this rule for the purposes of the National Environmental Policy Act and determined that it will result in no

significant impacts. As a result of the amendment, the definition of gasoline is changed from an undefined term to one using a quantified ratio of chemicals. The agency believes that commercial gasoline obtained at the pump has been used for the chemical resistance test, and that unleaded gasoline of 89 octane and above contains a small though unknown percentage of benzene, a known carcinogen. The adoption of the ASTM Reference Fuel, which does not contain benzene, will benefit the human environment. Further, although the total quantity of test fluid that will be used in a single year is unknown, the agency estimates that only three-quarters of an ounce of fluid will be required to test a headlamp. With respect to tar remover, the agency is also moving from an undefined term to one using a quantified ratio of chemicals; however, the levels of xylene and petroleum based mineral spirits is approximately the same for all tar removers and the impact upon the environment will be unchanged by this aspect of the rule. Finally, as for power steering fluid, the change to the qualification "as recommended by the vehicle manufacturer" should have minimal impact. Some automobile manufacturers recommend only one fluid whereas others recommend one and mention an allowable substitute.

The agency has considered the impact of this rule in relation of the Regulatory Flexibility Act. For the reasons discussed above, I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle lighting equipment, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles and lighting equipment will not be impacted.

Finally, the agency has considered this rule as it relates to Executive Order 12612 "Federalism." The rule will preempt any State law that differs from the rule, but will not preempt any State law that is identical to the rule, according to the express preemption provision of 15 U.S.C. 1392(d).

The engineer and lawyer primarily responsible for this proposal are Jere Medlin and Taylor Vinson respectively.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 continues to read as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50.)

2. Paragraphs (b)(1), and (b)(3) of paragraph S6.4 of § 571.108 are revised to read as follows:

§ 571.108 **Standard No. 108, Lamps, reflective devices, and associated equipment.**

* * * * *

S6.4 Chemical resistance.

* * * * *

(b) * * *

(1) ASTM Reference Fuel C, which is composed of Isooctane 50 volume % and Toluene 50 volume %. Isooctane must conform to A2.7 in Annex 2 of the Motor Fuels Section of the 1985 Annual Book of ASTM Standards, Vol. 05.04, and Toluene must conform to ASTM specification D362-84, *Standard Specification for Industrial Grade Toluene*. ASTM Reference Fuel C must be used as specified in:

(i) Paragraph A2.3.2 and A2.3.3 of Annex 2 to *Motor Fuels, Section 1* in the 1985 Annual Book of ASTM Standards; and

(ii) OSHA Standard 29 CFR 1910.106—*Handling Storage and Use of Flammable Combustible Liquids*.

(2) Tar remover (consisting by volume of 45% xylene and 55% petroleum base mineral spirits).

(3) Power steering fluid (as specified by the vehicle manufacturer for use in the motor vehicle on which the headlamp is intended to be installed).

* * * * *

Issued on June 21, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-18537 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 71158-7288]

Foreign Fishing Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final reassessment and reserve release, and request for comments.

SUMMARY: NMFS announces apportionment of the 46,400 metric ton reserve of Pacific whiting to foreign and domestic fisheries in the exclusive economic zone (EEZ) off Washington, Oregon, and California, and requests comments on this action. This action is based on a reassessment of the needs of the domestic fishing industry, and revises the 1988 estimates of domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and the total allowable level of foreign fishing (TALFF) for Pacific whiting. This action is intended to assure that the needs of the domestic industry are met before additional amounts are made available to the foreign fishery, and to provide for additional allocations of Pacific whiting to foreign countries, if appropriate, of those amounts surplus to domestic needs.

DATES: This action is effective on August 12, 1988. Comments must be submitted by September 16, 1988.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR 611.70 and Part 663 state that the Secretary of Commerce (Secretary) annually specifies a numerical optimum yield (OY), DAH, DAP, JVP, TALFF, and a reserve for Pacific whiting. Regulations at 50 CFR 611.70(d) establish procedures to reassess DAH, DAP, and JVP on or about July 1 each year, and to increase TALFF during the fishing year by any part of the reserve or surplus DAH that the Secretary determines will not be harvested by U.S. fishermen.

The initial DAP and JVP for 1988 were based on the projected needs of the U.S. industry, as surveyed by the NMFS Northwest Region in December 1987. The industry was surveyed again in June 1988 to determine whether there was any change in the domestic intent and capacity to harvest and process Pacific whiting for the rest of the calendar year. Past and projected U.S. catch, effort, and processing performance were taken into account. This preliminary reassessment indicated that the initial DAP and JVP should be increased by 2,000 mt and

15,000 mt, respectively, for a total increase to DAH of 17,000 mt. Because only 17,000 mt of the 46,400 mt reserve will be needed by U.S. harvesters in 1988, the remaining 29,400 mt is available for release to TALFF.

The results of the preliminary reassessment and the proposed release of the reserve were announced at the July 12-13, 1988 meeting of the Pacific Fishery Management Council (PFMC) in Portland, Oregon, and the public had opportunity to comment at that time. No comments were received. Therefore, the final reassessment and release of the reserve is the same as preliminarily announced to the Council in July.

The preliminary reassessment was not published in the *Federal Register* because prior consultation with the Council could not occur until mid-July. Publication of the final reassessment now, and the release of the reserve, is necessary because TALFF is small in 1988 and several foreign participants may exhaust their allocations prior to the release of the reserve if the final reassessment reserve/release is not published now. Because foreign countries often rely to a great extent on their directed fishing allocations to make their joint venture operations economically viable, any delay in releasing the reserve could jeopardize U.S. joint venture operations. Thus, the Administrator, NOAA, finds that circumstances compel publication of the final reassessment and reserve release now without having previously published the preliminary reassessment.

The purpose of releasing the portion of the reserve surplus to domestic needs is to provide for full utilization of the Pacific whiting resource by allowing for additional allocations to foreign countries in amounts which will not be utilized by the U.S. industry. However, there is no certainty that any or all of the additional TALFF will be allocated to foreign countries during 1988.

Secretarial Action

This action revises the 1988 initial specifications for Pacific whiting announced on January 6, 1988 (53 FR 246) as indicated in the following table.

CHANGES TO THE OPTIMUM YIELD SPECIFICATIONS FOR PACIFIC WHITING IN 1988 (IN METRIC TONS)

	Initial specification	Change	Final specification
OY	232,000		232,000
DAH	166,000	+17,000	183,000
DAP	16,000	+2,000	18,000
JVP	150,000	+15,000	165,000

CHANGES TO THE OPTIMUM YIELD SPECIFICATIONS FOR PACIFIC WHITING IN 1988 (IN METRIC TONS)—Continued

	Initial specification	Change	Final specification
TALFF.....	19,600	+29,400	49,000
Reserve.....	46,400	-46,400	

Classification

The reassessment of the needs of the domestic industry and the reapportionment of the Pacific whiting reserve to domestic and foreign fisheries are based upon the most recent data available. The action is taken under the authority of 50 CFR 611.70(d), is in compliance with Executive Order 12291, and is covered by the regulatory flexibility analysis and environmental impact statement prepared for the authorizing regulations. The action contains no collection of information requirement for purposes of the Paperwork Reduction Act.

This action is time critical, and so is taken without prior notice and public review. Foreign fishing allocations may be almost fully harvested by the time this notice is published in the Federal Register. Additional allocations are contingent upon release of the reserve. Delay in issuance of additional allocations is costly to the foreign fleet and may jeopardize U.S. joint venture operations. For these reasons, delay is impracticable, unnecessary, and contrary to the public interest. As a result, the Administrator, NOAA, finds that good cause exists to waive the requirement for prior public comment.

The public has had opportunity to comment on this action at the July 1988 meeting of the Pacific Fishery Management Council, at which time the Council concurred with this action. Written public comments also will be accepted for 30 days after publication of this notice in the Federal Register.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Fisheries.

Dated: August 12, 1988.

Richard H. Schaefer,
Director of Office of Fisheries Conservation
and Management, National Marine Fisheries
Service.

[FR Doc. 88-18601 Filed 8-12-88; 2:21 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 71146-8001]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of notice of closure.

SUMMARY: The Acting Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) for the "other rockfish" category in the Central Regulatory Area of the Gulf of Alaska has not been harvested. The Secretary of Commerce (Secretary), therefore, is modifying the previous closure notice, referenced below, by promulgating a reopening now and a new closure date. This action is necessary to fully harvest the TAC. It is a management action that makes best use of fishery resources in the Gulf of Alaska.

DATES: This notice for reopening is effective at noon, August 14, 1988, Alaska Daylight Time (ADT), until 12 Noon (ADT), August 20. Subsequently, this area will again be closed, effective after 12 Noon (ADT), August 20, 1988, until midnight, Alaska Standard Time (AST), December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the Exclusive Economic Zone (EEZ) in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.2 of the regulations defines the Western, Central, and Eastern Regulatory Areas in the Gulf of Alaska. Under the procedure set forth at § 672.20(a), 1988 TACs were established for each groundfish target species or species group and apportioned among the regulatory areas or district (53 FR 890, January 14, 1988).

One of the groups of groundfish species for which TAC was established is the "other rockfish" category, which in the Central Regulatory Area consists of members of the genus *Sebastes*, as described in Table 1 of § 672.20. The 1988 TAC for "other rockfish" in the Central Regulatory Area is 7,100 metric tons (mt) and is apportioned entirely to domestic annual processing (DAP).

On July 8, 1988, NMFS closed the Central Regulatory Area to further retention of "other rockfish", because the best available projected catch

information indicated that the TAC would be reached on that date (53 FR 26441, July 13, 1988). Subsequent tallying of fish tickets and weekly catch reports, however, showed that the real catch was 6,515 mt, or 585 mt less than the TAC. The Secretary, therefore, is reopening the "other rockfish" season at 12:00 noon ADT on August 14, 1988. NMFS has determined that the number of vessels that will participate in the reopening will catch the remaining TAC by August 20, 1988. Therefore, the Secretary is also announcing that further retention of "other rockfish" in the Central Regulatory Area after 12:00 noon ADT August 20, 1988, is prohibited.

Classification

This action is taken under § 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 1988.

Richard H. Schaefer,
Director of Office of Fisheries Conservation
and Management, National Marine Fisheries
Service.

[FR Doc. 88-18602 Filed 8-12-88; 2:22 pm]

BILLING CODE 3510-22-M

50 CFR Part 674

[Docket No. 80630-8130]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing the U.S. Exclusive Economic Zone off Southeastern Alaska to commercial fishing for all salmon species for 10 days. This action is necessary to stop the harvest of coho salmon by the troll fishery and is intended to ensure that the coho salmon stocks are not overharvested.

DATE: This notice is effective at 2359 hours Alaska Daylight Time (ADT), Sunday, August 14, 1988, and will expire at 2400 hours ADT, Wednesday, August 24, 1988. Public comments are invited until September 15, 1988.

ADDRESS: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. During the 30-day public comment period, the data upon which this notice is based will be available for public

inspection from 0800 through 1630 hours ADT Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT:

Aven M. Andersen (Fishery Management Biologist, NMFS) 907-586-7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the U.S. Exclusive Economic Zone (EEZ) off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska, East of 175 Degrees East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

The FMP also implements provisions of the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C. 3631 *et seq.*). Article III of the treaty requires that each Party conduct its fisheries to prevent overfishing of the salmon stocks subject to the treaty. The coho stocks being protected by this action are stocks subject to the treaty (article I (6) and 1988 amendment of annex IV, chapter 5).

On 12 July 1988 (in conjunction with a similar closure by the State of Alaska), the Secretary of Commerce (Secretary) closed the EEZ for the commercial harvest of chinook salmon and closed the Fairweather Grounds to the harvest of all salmon because the trollers had apparently harvested their allocation of chinook salmon (53 FR 26779, July 15, 1988). As of 28 July, the Alaska Department of Fish and Game estimates that the trollers have harvested about 231,900 chinook salmon, of which about 213,500 are charged to the quota of 263,000 set by the Pacific Salmon Treaty and about 18,500 are from Alaska's new salmon enhancement activities and are supplemental to the quota. Before the fishery started, the total allowable harvest of chinook salmon by the troll fishery was forecast to be about 221,000. Thus, the troll fishery has harvested its allocation of chinook salmon for 1988.

On 26 July (also in conjunction with similar actions by the State of Alaska), the Secretary closed for 10 days the entire EEZ off Southeast Alaska to commercial fishing for all salmon species to protect coho salmon from

being overharvested because it appeared that coho were considerably below average in abundance this year (53 FR 28403, July 28, 1988). That closure expired on 4 August, and the EEZ (except for the Fairweather Grounds) reopened to commercial fishing for salmon species other than chinook.

The available information since the troll fishery reopened on 5 August reaffirms the Secretary's opinion that coho are well below average in abundance this year in Southeast Alaska. The harvest by the commercial troll fishery is only about 28 percent of the 1981-1985 average harvest at this time. The coho harvests by the commercial gillnet fishery are about 50 percent of the average, and the sport harvest is only about 30 percent of the average.

Regulations implementing the FMP (at § 674.23(a)) provide that the Secretary may modify the fishing times and areas whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

- (1) The effect of overall fishing effort within any part of the management area;
- (2) The catch per unit of effort and the rate of harvest;
- (3) The relative abundance of salmon stocks within the management area;
- (4) The condition of salmon stocks throughout their ranges;
- (5) Any other factors relevant to the conservation of salmon.

The Secretary, therefore, in reviewing the available information on the coho stocks and fisheries, has determined that the effect of overall fishing effort, the catch per unit of effort, and the below average rate of harvest throughout the management area indicate that the condition of coho stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a modification of fishing times if coho stocks are to be conserved and managed adequately.

The available data shows the coho stocks to be well below average in abundance; accordingly, the Alaska Department of Fish and the Secretary have decided to close the troll fishery in State and Federal waters for 10 days to

protect the remaining coho. During the closure, the Alaska Department of Fish and Game will continue to monitor the strength of the coho harvests of the sport, gillnet, and purse seine fisheries in State waters.

The closure will become effective after this notice has been filed for public inspection with the Office of Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stock harvested in Southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c). However, a § 674.23(b)(3) requires the Secretary to accept and consider public comments for 30 days after the effective date of notices like this one, which did not provide an opportunity for the public to comment before it became effective. The aggregated data upon which this closure is based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity of this action and will publish another notice in the *Federal Register* either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: August 12, 1988.

Richard H. Schaefer,
Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18650 Filed 8-12-88; 4:43 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 159

Wednesday, August 17, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Schedules

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations to eliminate the requirement for agreements between agencies and OPM in employing persons with mental retardation. The proposed change is intended to improve the use of this appointing authority by eliminating a requirement not specifically required in law.

DATES: Comments must be submitted on or before October 17, 1988.

ADDRESS: Send or deliver written comments to Patricia Paige, Chief, Programs Division, Office of Affirmative Recruiting and Employment, Career Entry Group, Office of Personnel Management, Room 6332, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Orian Falkenberg, (202) 632-0601.

SUPPLEMENTARY INFORMATION: A Presidential memo to heads of executive departments and agencies in September, 1961, announced that the U.S. Civil Service Commission was establishing a special appointing authority in the excepted service for mentally retarded applicant. Under the regulations published in 5 CFR Part 213, for this authority, agencies are required to execute a written agreement with the Office of Personnel Management before they and their components may use this appointing authority. The original purpose of this agreement was to ensure that agencies followed the procedures specified in the Federal Personnel Manual. Most agencies have executed this agreement, and they have now had

many years of experience in using this appointing authority. The Personnel Directors' Productivity Task Force has recommended that the requirement for the written agreement be eliminated. OPM reviewed this requirement and agreed that it is no longer necessary.

E.O. 12991, Federal Regulation

I have determined that this is not a major rule as defined by section 1(b) of E.O. 12991, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal applicants.

List of Subjects in 5 CFR Part 213

Government employees, administrative practice and procedure.

U.S. Office of Personnel Management.

Constance Horner,
Director.

Accordingly, OPM proposes to amend Part 213 of Title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301, and 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931); 3307, 8337(h), and 8457.

2. In § 213.3102, paragraph (t) is revised to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by the Office.

* * * * *

[FR Doc. 88-18578 Filed 8-16-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-90-AD]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection and repair, as necessary, of the body and canted bulkhead structure for cracks at the nose gear wheel well forward corners. Recent service experience indicates that airplanes which have been modified by the incorporation of an external doubler need to be inspected externally as well as internally to detect cracks. Since an undetected crack may result in sudden loss of cabin pressurization and extensive structural damage, a new AD is being proposed to include additional inspection and repair requirements. This action would also add additional airplanes which may be subject to similar cracking.

DATE: Comments must be received no later than October 11, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention, Airworthiness Rules Docket No. 88-NM-90-AD, 17900 Pacific Highway South, C-68968, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing

address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-90-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: On August 24, 1984, FAA issued AD 84-18-02, Amendment 39-4906 (49 FR 35622; September 9, 1984), applicable to certain Boeing Model 747 series airplanes, to require inspection and repair, as necessary, of the body and canted bulkhead structure for cracks at the nose gear wheel well forward corners. That action was prompted by reports from five operators that 12 cracks were found on nine airplanes. Such cracking, if not detected and corrected, could result in sudden loss of cabin pressurization, as well as structural damage to the airplane.

Since issuance of that AD, service experience has indicated that airplanes modified by the incorporation of an external doubler need to be inspected externally, as well as internally, to detect cracks. It was also discovered by the manufacturer that Group 3 airplanes, as defined in Boeing Service Bulletin 747-53-2112, may also have similar cracking. Because an undetected crack may result in sudden loss of cabin pressurization and extensive structural damage, the FAA has determined that additional inspections are required in

order to adequately detect cracking, and that Group 3 airplanes must also be subject to these inspections.

The FAA has reviewed and approved Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988, which describes an inspection program that will ensure the structural integrity of the nose gear wheel well forward lower corner structure.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would supersede AD 84-18-02 and require additional inspections of the nose gear wheel well forward corners on certain Boeing Model 747 series airplanes, including Group 3 airplanes, in accordance with the Boeing service bulletin previously described.

It is estimated that a total of 114 airplanes (including 24 additional planes) of U.S. registry would be affected by this AD, that it would take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Repair parts are estimated at \$2,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,140,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 84-18-02, Amendment 39-4906 (49 FR 35622; September 11, 1984), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, Groups 1, 2, and 3 as listed in Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the body skin and the canted pressure bulkhead structure, accomplish the following:

A. For Group 1 airplanes on which the initial inspection requirements of Airworthiness Directive (AD) 84-18-02 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747-53-2112:

1. Prior to the accumulation of 4,000 landings or within the next 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 landings, perform a detailed visual inspection of the nose gear wheel well forward lower corners, exterior and interior area, for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revisions 3 or 4. Additionally, perform a high frequency eddy current (HFEC) inspection of the chord and doubler for cracks at the two forward hinge fairing attach bolt locations, in accordance with Boeing Service Bulletin 747-53-2112, Revisions 3 or 4.

2. Cracks found while conducting the inspections required by paragraph A.1., above, must be repaired as follows:

a. If the crack is visible on an interior surface, or exceeds any of the limits defined in paragraph A.2.b., below, repair in accordance with FAA-approved procedures prior to further flight.

b. If the crack is visible from an exterior surface only and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of skin fasteners, repair in accordance with an FAA-approved procedure prior to the accumulation of 500 additional landings, provided that a detailed visual inspection is performed at intervals not to exceed 100 landings.

3. Inspections are to continue after repair. If additional cracks are found, repair in

accordance with FAA-approved procedures prior to further flight.

B. For Group 1 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections and to make repairs, if necessary, in accordance with the requirements of paragraph A., above.

C. For Group 1 airplanes on which the initial inspection requirements of AD 84-18-02 have not been conducted as of the effective date of this AD, and which have been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747-53-2112:

1. Inspect the nose gear wheel well forward lower corners at the times and using the methods specified in either paragraph C.1.a. or C.1.b., below.

a. Option I: External inspection.

Within 1,500 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform an external detailed visual inspection of the nose gear wheel well forward lower corner structure for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. After the initial inspection, continue to inspect as follows: Perform external general visual inspections at intervals not to exceed 100 landings, and external detailed visual inspections at intervals not to exceed 1,000 landings, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988.

b. Option II: External and internal inspection.

Within 1,500 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform an external and internal detailed visual inspection of the nose gear wheel well forward lower corner structure for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat external and internal detailed visual inspections at intervals not to exceed 1,500 landings.

2. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

3. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

D. For Group 1 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections and to make repairs, if necessary, in accordance with the requirements of paragraph C. of this AD.

E. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have not been conducted as of the effective date of this AD, and which have not

been modified by incorporation of the hinge fairing rework or modification doublers in accordance with Boeing Service Bulletin 747-53-2112: Perform the inspections and repairs, if necessary, in accordance with the requirements of paragraph A. of this AD, except that repetitive inspection intervals shall not exceed 2,000 landings. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

F. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of the hinge fairing rework or modification doublers in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections and to make repairs, if necessary, as described in paragraph A. of this AD, except that repetitive inspection intervals shall not exceed 2,000 landings. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

G. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have not been conducted as of the effective date of this AD, and which have been modified by incorporation of the hinge fairing rework in accordance with Boeing Service Bulletin 747-53-2112:

1. Within 6,000 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform a low frequency eddy current (LFEC) inspection for cracks in the underskin doubler at the nose gear wheel well forward lower corners, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat low frequency eddy current inspections in the underskin doubler at intervals not to exceed 2,000 landings.

2. If a crack is found that is visible on an interior surface or exceeds any of the limits in paragraphs C.3., below, repair in accordance with FAA-approved procedures prior to further flight.

3. If an underskin doubler crack is found that is not visible from the interior and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of fasteners, repair in accordance with FAA-approved procedure prior to the accumulation of 500 additional landings, provided that a detailed visual inspection of the nose gear wheel well forward corner structure is performed at intervals not to exceed 100 landings.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

H. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of hinge fairing rework only in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections and to make repairs, if necessary, in accordance with the requirements of paragraph G. of this AD.

I. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of the hinge fairing rework and modification doublers in accordance with Boeing Service Bulletin 747-53-2112:

1. If the underskin doubler was not cracked at the time of modification, within 10,000 landings after the modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

2. If the underskin doubler was cracked at the time of modification, within 2,000 landings after modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

3. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

J. For Group 3 airplanes which have not been modified by incorporation of the external doubler in accordance with Boeing Service Bulletin 747-53-2112:

1. Within 6,000 landings after hinge fairing modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform a low frequency eddy current inspection for cracks in the underskin doubler at the nose gear wheel well forward lower corners, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat low frequency eddy current inspections in the underskin doubler at intervals not to exceed 2,000 landings.

2. If a crack is found that is visible on an interior surface or exceeds the limits defined in paragraph J.3., below, repair in accordance with FAA-approved procedures prior to further flight.

3. If an underskin doubler crack is found that is not visible from the interior and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of fasteners, repair in accordance with FAA-approved procedure prior to the accumulation of 500 additional landings, provided that a detailed visual inspection of the nose gear wheel well forward corner structure is performed at intervals not to exceed 100 landings.

4. Inspections are to continue after repair. If additional cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

K. For Group 3 airplanes which have been modified by incorporation of the external

doubler in accordance with Boeing Service Bulletin 747-53-2112:

1. If the underskin doubler was not cracked at the time of modification, within 10,000 landings after modification or within 1,000 landings after the effective date of AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

2. If the underskin doubler was cracked at the time of modification, within 2,000 landings after modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

3. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

L. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

M. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's number of hours time in service by the operator's fleet average time from takeoff to landing for the airplane type.

N. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC on August 8, 1988.

Thomas E. McSweeney,
Acting Director, Office of Airworthiness.
[FR Doc. 88-18544 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket Number 86-ANE-34]

Airworthiness Directives; Pratt & Whitney (PW) JT9D-7R4D, D1, E, E1, E4, G2, and H1 Series Turbofan Engines.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires the installation of containment shields in the fan case assembly and stronger material B-flange bolts on certain PW JT9D-7R4 turbofan engines, prior to December 31, 1990. The proposed AD would amend AD 87-23-05 by allowing an alternate method for the installation of fan containment hardware on certain engines and restating for clarity the existing AD requirements. The proposed AD is needed to prevent fragments of a failed fan blade from penetrating the fan case assembly which could result in damage to the aircraft.

DATES: Comments must be received on or before September 16, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86-ANE-34, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 86-ANE-34".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletins (SB's) may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB's is contained in Rules Docket Number 86-ANE-34, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Diane M. Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Engine & Propeller Directorate, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7082.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-34". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend Amendment 39-5755 (52 FR 41704; October 30, 1987), AD 87-23-05, by allowing an alternative method for the installation of fan blade containment hardware and to clarify the compliance requirements of the existing AD. On October 9, 1987, Amendment 39-5755 was issued requiring installation of containment shields in the fan case assembly of JT9D-7R4 series engines in accordance with the applicable SB JT9D-7R4-72-311, Revision 2, or SB JT9D-7R4-72-312, Revision 2. The AD was necessary to prevent uncontained blade fragment penetration of the fan case assembly in the event of a blade failure. Field experience and analysis indicated that energy of a failed fan blade may have the required force to penetrate the fan case assembly forward of the B/flange.

Additional data gathered by the FAA, since issuance of AD 87-23-05, has shown that an interference problem can occur on JT9D-7R4D, D1, E, E1, E4, and H1 series engines during installation of containment shields under adverse tolerance conditions when installed in accordance with SB JT9D-7R4-72-312, Revision 2, dated June 26, 1987.

This proposed amendment will allow an optional procedure in accordance with SB JT9D-7R4-72-312, Revision 4, if an interference problem occurs. Interference between the front containment shield retaining bolts Part Number (P/N) 1A7544 and the fan case inner diameter (ID) flange may exist. Additional washers, P/N MS9320-10, may be installed on the forward side of B-flange to provide bolt to flange clearance. Also, adverse tolerance stack-up between the four bolts, P/N MS9209-16, and the mating B-flange nuts may result in an insufficient bolt thread engagement on some engines. If insufficient bolt thread engagement occurs, bolts MS9209-17, MS9209-18, or MS9209-19, may be used, provided there is no interference with adjacent hardware.

It has also been determined that in addition to PWA 36003 Adhesive and PR1422 Class A polysulfide sealant as specified in SB JT9D-7R4-72-311 and SB JT9D-7R4-72-312, Revision 2, an additional alternative, PR1422 Class B polysulfide sealant may be used in attaching the containment ring segments in accordance with SB JT9D-7R4-72-311, Revision 3, and SB JT9D-7R4-72-312, Revision 4.

Additionally, the FAA has determined that clarification of paragraph (b)(1) of AD 87-23-05 is required to specify containment shield and fan case compatibility for the JT9D-7R4D, D1, E, E1, E4, and H1 series engines. The installation of the applicable shield to the fan case assembly depends upon the material of the fan case. For titanium cases, the applicable shield to use is P/N 802096; for steel cases, use P/N 802095.

Since the condition is likely to exist or develop on other engines of the same type design, the proposed AD would amend Amendment 39-5755 (52 FR 41704; October 30, 1987), AD 87-23-05, by allowing an alternative procedure in the incorporation of the containment shields.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion: The FAA has determined that this proposed regulation involves 619 total engines at an approximate cost of \$520,000. It has also been determined that few, if any, small entities within the

meaning of the Regulatory Flexibility Act will be affected since this proposed regulation affects only operators using B767, B747, A310, or A300 aircraft in which the JT9D-7R4 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending § 39.13, Amendment 39-5755 (52 FR 41704; October 30, 1987) Airworthiness Directive (AD) 87-23-05, as follows:

(The amendment is restated in its entirety for clarity.)

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D-7R4, D, D1, E, E1, E4, G2, and H1 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent fan blade fragment penetration of the fan case assembly, accomplish the following prior to December 31, 1990.

(a) For JT9D-7R4G2 series turbofan engines:

(1) Modify fan case assembly by installing shield, Part Number (P/N) 802094, in accordance with PW Service Bulletin (SB) JT9D-7R4-72-311, Revision 3, dated February 19, 1988.

(2) Modify outer front fan exit case assembly (fan exit case and vane assembly), by installing ring segments, P/N's 803264-01, 803265-01, and 802448, in accordance with

PW SB JT9D-7R4-72-311, Revision 3, dated February 19, 1988.

(3) Reidentify the modified fan case assembly, outer front fan exit case assembly, and the fan exit case and vane assembly, in accordance with PW SB JT9D-7R4-72-311, Revision 3, dated February 19, 1988.

(b) For JT9D-7R4D, D1, E, E1, E4, and H1 series turbofan engines:

(1) Modify fan case assembly by installing shield, P/N 802095, on engines with steel fan case assemblies and shield, P/N 802096, on engines with titanium fan case assemblies, in accordance with PW SB JT9D-7R4-72-312, Revision 4, dated July 8, 1988.

(2) Modify outer front fan exit case assembly, or detail of fan exit case and vane assembly, and install ring segments, P/N's 803261-01, 803262-01, and 802447, in accordance with PW SB JT9D-7R4-72-312, Revision 4, dated July 8, 1988.

(3) Reidentify the modified fan case assembly, the outer front fan exit case assembly, and the fan exit case and vane assembly, in accordance with PW SB JT9D-7R4-72-312, Revision 4, dated July 8, 1988.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine & Propeller Directorate, may adjust the compliance schedules specified in this AD.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Engine & Propeller Directorate, Aircraft Certification Services, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The FAA will request the approval of the Federal Register to incorporate by reference the manufacturer's service bulletins identified and described in this document.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeney,
Acting Director, Office of Airworthiness.
[FR Doc. 88-18550 Filed 8-16-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-94-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) applicable to certain Boeing Model 757 series airplanes, which would require periodic

freeplay checks of the elevator, and replacement of worn elevator power control actuator (PCA) rod end bearings, if necessary. This proposal is prompted by reports of excessive wear of elevator PCA rod end and reaction link rod end bearings. This condition, if not corrected, could lead to unacceptable airframe vibration during flight.

DATES: Comments must be received no later than September 23, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-94-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contract concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of

the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-94-ADF, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. *Discussion:* The manufacturer has notified the FAA of the finding of excessive wear of elevator PCA rod end and reaction link rod end bearings of in-service Boeing Model 757 series airplanes. Four airplanes experienced intermittent airframe vibrations and five airplanes experienced pitch oscillations with the autopilot engaged. These experiences occurred as a result of PCA rod end and PCA reaction link rod end bearing wear. These bearings are prone to excessive wear because of corrosion resulting from insufficient lubrication and seals which permit moisture to penetrate the bearings. Worn elevator PCA rod end bearings, if not detected and corrected, can result in excessive elevator freeplay and unacceptable airframe vibration during flight.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-27A0086, dated June 9, 1988, which defines the specific inspection procedures to be used to check the elevator for freeplay. A modification is described in the service bulletin, which consists of replacing the existing bearings with improved bearings.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require periodic elevator freeplay checks on elevators incorporating old design bearings, and replacement, as necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 136 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$163,200.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. This, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive order 12291 and (2) is not a significant rule pursuant

to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.19 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes listed in Boeing Alert Service Bulletin 757-27A0086, dated June 9, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent unacceptable airframe vibrations during flight, accomplish the following:

A. Within the next 90 days after the effective date of this AD or prior to the accumulation of 3,000 flight hours total time in service, whichever occurs later, and thereafter at intervals not to exceed 3,000 flight hours, perform an elevator freeplay check in accordance with Boeing Alert Service Bulletin 757-27A0086, dated June 9, 1988. If freeplay exceeds the limits specified in the service bulletin, before further flight, replace elevator power control actuator (PCA) reaction link rod end bearings and PCA rod end bearings, as necessary, in accordance with the service bulletin.

B. Terminating action for the repetitive inspection requirements of paragraph A. of this AD consists of replacing all old design bearings with improved bearings, in accordance with the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway south, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeney

Acting Director, Officer of Airworthiness.

[FR Doc. 88-18541 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 88-AEA-7]

Proposed Alteration of Jet Route; New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-217 located in the vicinity of Hancock, NY. A segment of J-217 west of the Keating, PA, very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC) is never used or requested. This notice proposes to revoke that segment between Keating and Franklin, PA. This proposed action would reduce chart clutter.

DATES: Comments must be received on or before September 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 88-AEA-7, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AEA-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to revoke a segment of Jet Route J-217 between Keating, PA, and Franklin, PA. This segment of J-217 is never used and we are proposing to remove this segment from the charts whereby reducing chart clutter. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 1.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

Section J-217 [Revised]

From Hancock, NY; to Keating, PA.

Issued in Washington, DC, on August 8, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-18548 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75**[Airspace Docket No. 88-AEA-6]****Proposed Alteration of a Jet Route;
New York****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of a jet route located in the vicinity of New York, NY. The LaGuardia, NY, very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) will be relocated from its current site on Rikers Island, NY, to the LaGuardia Airport. This action would amend the description of one jet route affected by the relocation.

DATES: Comments must be received on or before September 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 88-AEA-6, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the

FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AEA-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of a jet route that will be affected by the relocation of the LaGuardia VOR/DME. The LaGuardia VOR/DME will be relocated from Rikers Island, NY, to the LaGuardia Airport (lat. 40°47'01"N, long. 73°52'08"W.). This action would change the description of one jet route affected by this relocation. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter

that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-42 [Amended]

By removing the words "LaGuardia, NY; INT LaGuardia 043° and Hartford, CT, 236° radials;" and substituting the words "LaGuardia, NY; INT LaGuardia 042°T(054°M) and Hartford, CT, 236°T(249°M) radials;"

Issued in Washington, DC, on August 5, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-18547 Filed 8-16-88; 8:45 am]

BILLING CODE 4610-13-M

FEDERAL TRADE COMMISSION**16 CFR Part 13****[File No. 852-3236]****Montgomery Ward & Co., Inc.;
Proposed Consent Agreement With
Analysis to Aid Public Comment****AGENCY:** Federal Trade Commission.**ACTION:** Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Chicago, Ill. retailer from misrepresenting service contract coverage and products' need

for maintenance, adjustment, or servicing. The consent agreement also would prohibit respondent from making any claims about the durability of any product for which it sells service contracts, unless it has competent and reliable evidence that substantiates its claims.

DATE: Comments must be received on or before October 17, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. (202) 326-3105.

FOR FURTHER INFORMATION CONTACT:

Lawrence Hodapp, FTC/H-238A, Washington, DC 20580. (202) 326-3105.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or view will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Service contracts, Trade practices.

Agreement Containing Order to Cease and Desist

The Agreement herein, by and between Montgomery Ward and Company, Inc., hereinafter sometimes referred to as "respondent," by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

(1) Montgomery Ward & Co., ("Montgomery Ward") is an Illinois corporation. Montgomery Ward has its principal office or place of business located at One Montgomery Ward Plaza, Chicago, Illinois.

(2) Respondent has been served with a copy of the Complaint issued by the Federal Trade Commission charging it with violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a) (1980).

(3) Respondent admits all the jurisdictional facts set forth in the Commission's Complaint in this proceeding.

(4) Respondent waives:

(a) any further procedural steps;

(b) the requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law;

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement.

(5) This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

(6) This Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the Complaint.

(7) This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent: (a) Issue its decision containing for following Order to Cease and Desist in disposition of the proceeding, and (b) make information public in respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed to Order to respondent's address as stated in this Agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order not defined therein, and no agreement, understanding, representation, or interpretation not contained in the order or the Agreement may be used to vary or contradict the terms of the Order.

(8) Respondent has read the Complaint and the Order contemplated hereby and understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully

complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that respondent Montgomery Ward & Co., Inc., its successors and assigns, and its officers, representatives, agents, and employees, acting directly or through any corporation, subsidiary, division, or other device, in connection with the marketing or sale of any service contract, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

(1) The necessity of maintenance, adjustments or servicing of any product for which any service contract is sold or offered for sale;

(2) That any person or organization has endorsed the use, purchase, desirability, or necessity of any service contract; or

(3) The coverage by any service contract of routine maintenance, repairs occasioned by improper use of the product by any person, day-to-day servicing, cleaning, or adjustments.

For the purpose of this Order, the term "service contract" shall mean a contract in writing to perform, over a fixed period of time or for a specified duration, any service relating to the maintenance or repair (or both) of a product, which contract is sold to consumers for separate consideration than the insured product.

II

It is further ordered that Montgomery Ward & Co., Inc., its successors and assigns, and its officers, representatives, agents, and employees, acting directly or through any corporation, subsidiary, division, or other device, in connection with the marketing or sale of any service contract, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, about the durability or reliability of, the incidence of malfunctions or defects in, or the incidence of repairs or servicing of, any product for which any service contract is sold or offered for sale, unless at the time of such representation respondent possesses and relies upon competent and reliable evidence that substantiates such representation. Evidence in the

form of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions to yield accurate, reliable, and reproducible results.

III

It is further ordered that respondent and its successors and assigns shall maintain for three (3) years after the date of the last dissemination of the representation and upon request make available to the Federal Trade Commission for inspection and copying:

1. Copies of all materials relied upon by each representation subject to this Order; and

2. Copies of all materials relating to any tests, experiments, analyses, research, studies, surveys, or expert opinions in the possession of the respondent that may contradict, qualify, or call into question any representation subject to this Order.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment, or sale, resulting in the termination of respondent and the creation of one or more successors, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

V

It is further ordered that respondent, within thirty (30) days of the date of service of this Order, shall distribute a copy of this Order to each of respondent's corporate and territorial operating divisions' officers or agents of respondent at store manager level or greater with supervisory responsibility in connection with the marketing or sale of any service contract and shall obtain from each such person a signed statement acknowledging receipt of a copy of the Order.

VI

It is further ordered that within sixty (60) days after the date of service of this Order respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Montgomery Ward,

Inc., Montgomery Ward Plaza, Chicago, Illinois 60671. Montgomery Ward is a national retailer of consumer products. The company offers service contracts on a variety of the products it sells, including both its private label products and products carrying other brand names.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges Montgomery Ward with making express misrepresentations of fact in the sale and offering for sale of service contracts in order to induce consumers to purchase service contracts. Part I alleges that Ward misrepresented the necessity of performing repairs, maintenance, adjustment, and or servicing on products for which it sells service contracts. Part I alleges also that the company misrepresented to consumers that *Consumer Reports* endorsed the purchase of service contracts.

In addition, Part II of the complaint alleges that Ward misrepresented the terms or features of its service contracts. The complaint charges Ward with making misrepresentations regarding the coverage by certain service contracts of routine maintenance, cleaning, adjustments, and or repairs necessitated by improper use. In Part III, the complaint alleges that Ward represented to consumers that current models of its products require the same or greater maintenance than earlier models. The complaint alleges that at no time has Montgomery Ward possessed and relied upon substantiation for such representations.

The proposed consent order would prohibit Ward from making the types of misrepresentations set forth in the complaint. Part I of the order would prohibit misrepresentations relating to the product's need for maintenance, adjustment, or servicing; the endorsement by any persons or organizations of the purchase of service contracts; and the coverage by any service contract of routine maintenance, day to day servicing, cleaning, adjustment, or repairs necessitated by improper use.

Part II of the proposed consent order would require Ward to possess and rely upon competent and reliable evidence that substantiates any claim made about the reliability or durability, or the incidence of repairs or servicing

required for any product for which a service contract is sold. Part III would require Ward to maintain copies of all materials which it relied upon in making any representation, as well as copies of materials relating to all tests, analyses, expert opinions, or other information that may qualify or call into question any such representation, for a period of three years after the last date of dissemination of the material.

The proposed consent order would also require Montgomery Ward to distribute a copy of the order to each of its officers or agents, at store manager level or higher, who have supervisory authority in connection with the marketing or sale of service contracts. It would require Ward to obtain a signed statement from each such person acknowledging receipt of a copy of the order. Finally, the proposed order would require Montgomery Ward to file a compliance report within sixty (60) days after service of the order, and to notify the Commission of any proposed change in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-18554 Filed 8-16-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM88-17-000]

Regulations Governing the Public Utility Regulatory Policies Act of 1978

July 29, 1988

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing the implementation of Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA). Since issuance of the current regulations, a number of problems have developed with the interpretation and implementation of these regulations. This notice of proposed rulemaking addresses problems with the criteria and procedures under section 201 of PURPA by which qualifying small power

production and cogeneration facilities, *i.e.*, qualifying facilities (QFs), can obtain PURA benefits. Specifically, the Commission proposes to revise its regulations regarding certification procedures for qualifying facilities and the technical standards for cogeneration and small power production facilities.

The Commission also solicits comments on three potential changes to the regulation regarding electric utility ownership of QFs. First, the Commission seeks comment on whether there should be a bar against purchases by a utility from an affiliated QF. Second, if a bar against affiliate sales is adopted, the Commission seeks comments on whether to allow a utility's subsidiary to own 100% of a QF. Finally, the Commission seeks comments on the advisability of adopting a revenue test for defining when a company is "primarily engaged" in the sale of non-QF electric power.

DATES: The Commission is scheduling a public hearing to be held on November 16, 1988, to provide interested persons with an opportunity to make oral presentation of their views. Requests to participate must be filed in writing (separately from comments) with the Secretary on or before October 27, 1988. An original and 14 copies of written comments on the proposed rule must be filed with the Commission on or before October 27, 1988.

Replies to written comments must be filed with the Commission on or before November 28, 1988. Replies to written comments must not exceed 15 double-spaced pages.

ADDRESS: Requests to participate at the public hearing, written comments and reply comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

For Further Legal Information Contact:

Gilda E. Rodriguez, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-9155.

For Further Technical Information Contact:

James C. Liles, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-8069.

John Emami, Office of Electric Power

Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 376-9381.

SUPPLEMENTARY INFORMATION: The Commission provides all interested persons an opportunity to inspect or copy the contents of this notice of proposed rulemaking during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. CIPS operates at 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of proposed rulemaking is available on CIPS for 10 days from the date of issuance.

The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 100, 825 North Capitol Street NE., Washington, DC 20426.

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I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing the implementation of Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA).¹ Since issuance of the current regulations, a number of problems have developed with the interpretation and implementation of these regulations. The instant rulemaking addresses problems with the criteria and procedures under section 201 of PURPA by which qualifying small power production and cogeneration facilities, *i.e.*, qualifying facilities (QFs), can obtain PURPA benefits.²

¹ 16 U.S.C. 796-825r (1982).

² Section 210 of PURPA directs the Commission to "prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage

Continued

Specifically, the Commission proposes to clarify its rules by amending Part 292. In so doing, the Commission believes it will satisfy its statutory obligation to periodically review and revise regulations as necessary to encourage cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for electric consumers.

II. Background

PURPA was one component of Congress' effort to solve what was perceived as a nationwide energy crisis in 1978, when it enacted omnibus legislation intended to provide for increased conservation of electric energy and increased efficiency in the use of facilities and resources by electric utilities.

In PURPA, Congress recognized the potential of cogeneration³ and small

cogeneration and small power production * * *. In a separate rulemaking in Docket No. RM88-6-000, the Commission recently proposed to clarify its rules on the administrative determination of avoided cost under PURPA. See Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities, and Interconnection Facilities, 53 F.R. 9331, IV FERC Statutes and Regulations, Proposed Regulations ¶ 32.457 at 32,155 (1988) [hereinafter ADFAC NOPR]. The Commission also proposed rules in Docket No. RM88-5-000 to permit states to set avoided cost rates through bidding mechanisms. See Regulations Governing Bidding Programs, 53 F.R. 9324, IV FERC Statutes and Regulations, Proposed Regulations ¶ 32.455 at 32,031 (1988) [hereinafter Bidding NOPR].

³ Cogeneration is the sequential production of electrical power and useful thermal energy, such as heat or steam. The sequential use of energy can involve either electricity production first, thermal application second ("topping-cycle") or vice versa ("bottoming-cycle"). Because both types of energy (heat and electricity) are produced in a single process, fuel savings in the range of 10-30% are generally possible in cogenerated production of electricity and steam as compared to producing the two separately. See Stobaugh and Yergin (editors), *Energy Future* 159 (Random House 1979). These fuel efficiencies were explained in a 1980 General Accounting Office report:

Most industrial process steam is produced through direct combustion of fossil fuels. Direct combustion of results in available heat reaching temperatures as high as 3,600 degrees F. Most industrial processes, however, require steam at much lower temperatures, less than 400 degrees F. Thus, burning fuels to produce only low-temperature process steam is an inefficient use of energy. Substantial fuel savings can be achieved if the high-temperature energy available from combustion is first used to generate power, and then reject heat, ranging from 200 to 1,000 degrees F, depending on the types of fuel and systems involved, is used for industrial process heat applications.

Comptroller General, "Industrial Cogeneration—What It Is, How It Works, Its Potential," at 11 (U.S. General Accounting Office, 1980).

power production⁴ to increase the efficiency of generating electric energy and reduce the nation's reliance on imported oil.⁵

Prior to the enactment of PURPA, a cogeneration or small power production facility seeking to establish interconnected operation with a utility faced three major obstacles. First, a utility was not generally willing to purchase the electric output or was not willing to pay a fair rate for that output. Second, some utilities charged discriminatorily high rates for back-up service to cogeneration and small power production facilities. Third, QFs that provided electricity to a utility's grid risked being considered a public utility and subject to extensive state and Federal regulation.⁶

In recognition of these impediments, Congress enacted Title II of PURPA to foster the development of cogeneration and small power production.

Section 210 also directs the Commission to exempt qualifying cogeneration facilities and certain small power production facilities, in whole or in part, from the Federal Power Act (FPA),⁷ the Public Utility Holding Company Act (PUHCA),⁸ and state laws and regulations regarding the financial or organizational regulation of electric utilities, if the Commission determines such exemption is necessary to encourage cogeneration and small power production.⁹

Congress took this action because it believed that the burdens of traditional utility-type regulation were likely to discourage cogeneration and small power production.¹⁰ Thus, Congress

⁴ Small power production facilities use biomass, waste, renewable resources (including wind, solar, and water) geothermal energy, or any combination thereof to produce electric power. Reliance on these sources of energy can reduce the demand for traditional fuels.

⁵ See Report of the Senate Committee on Energy and Natural Resources on S. 2114 (the Senate version of PURPA), No. 95-442, 95th Cong., 1st Sess. 2 (1977).

⁶ See, e.g., 123 Cong. Rec. 23848 (daily ed. Aug. 1, 1977) (remarks of Sen. Percy); *id.* at 32403, (Oct. 5, 1977) (remarks of Sen. Durkin); *id.* at 32437, (remarks of Sen. Haskell); *id.* 32419 (remarks of Sen. Hart).

⁷ 16 U.S.C. 792 *et seq.* (1982).

⁸ 15 U.S.C. 79 *et seq.* (1982).

⁹ 16 U.S.C. 824a-3(c) (1982). Qualifying cogeneration facilities, qualifying small power production facilities not exceeding 30 megawatts power production capacity are exempt. 16 U.S.C. 824a-3(e) (1982). Subsequent legislation exempted geothermal and solar powered small power producers up to 80 megawatts from FPA and PUHCA oversight. Energy Security Act, Pub. L. 96-294, section 643(b); Energy and Water Development Appropriations Act of 1988, Pub. L. 100-202, section 310.

¹⁰ See Executive Office of the President, The National Energy Plan (G.P.O. 1977) at 45. See also *The Commonwealth of Massachusetts*,

concluded that exempting these facilities from traditional utility-type regulation would be an effective stimulus to QF development.¹¹

Section 3(17) of the FPA, as amended by PURPA, defines a qualifying small power production facility as an entity which "produces electric energy solely by the use, as a primary energy source, or biomass, waste, renewable resources, geothermal energy, or any combination thereof,"¹² with a power production capacity which, together with any other facilities located at the same site, is not greater than 80 megawatts.¹³ A small power producer must use a specified "primary energy source" for all electric generation, except as required for emergency, maintenance, control and related purposes.¹⁴ Persons "not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)" may obtain qualifying small power production facility status if they meet such eligibility requirements as the Commission may prescribe by rule.¹⁵

A qualifying cogeneration facility is defined as a facility that produces electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes.¹⁶ Unlike the provisions governing small power production facilities, the statute does not specify maximum size or primary energy source limitations for cogeneration facilities. However, in order to qualify, a person not primarily engaged in the generation or sale of electric power must satisfy requirements governing minimum size, fuel use and fuel efficiency as the Commission may prescribe by the rule.¹⁷

The Commission implemented sections 201 and 210 in a series of rulemakings in 1980.¹⁸ The

Cogeneration: Its Benefits to New England (Oct. 1978).

¹¹ Resource Planning Associates, Inc., *The Potential for Cogeneration Development in Six Major Industries by 1985* (1977).

¹² See 18 CFR 292.204. Biomass was defined by the Commission to mean any organic material not derived from fossil fuels; waste is any by-product material other than biomass. 18 CFR 292.202 (a) and (b). Renewable resources include energy sources such as solar, wind and hydropower.

¹³ 16 U.S.C. 796(17)(A) (1982).

¹⁴ 16 U.S.C. 796(17)(B) (1982).

¹⁵ 16 U.S.C. 796(8)(C) (1982).

¹⁶ 16 U.S.C. 796(18)(A) (1982).

¹⁷ 16 U.S.C. 796(18)(B). These rules were promulgated in Order No. 69 issued February 19, 1980.

¹⁸ See *Small Power Production and Cogeneration Facilities; Regulations Implementing section 210 of the Public Utility Regulatory Policies Act of 1978*,

Continued

Commission's Order No. 70 implements section 201 by setting forth procedural and technical criteria by which cogeneration and small power production facilities can obtain qualifying status.¹⁹ Procedurally, Order No. 70 permitted qualification without a need for Commission action, *i.e.*, QFs were given the opportunity to self-qualify. It also made available an optional procedure whereby a facility can gain Commission certification as a QF.

With respect to technical standards, Order No. 70 set forth permitted levels of fossil fuel use by qualifying small power production facilities for such purposes as ignition, startup, testing, flame stabilization, and control, and for operation during unanticipated outages of the primary energy source.

For qualifying cogeneration facilities, Order No. 70 set forth efficiency standards for certain new facilities using oil or gas and adopted operating standards for all topping-cycle cogeneration facilities in order to assure that a qualifying cogenerator is a *bona fide* cogenerator that produces a minimum quantity of thermal energy as well as electricity.²⁰ Order No. 70 established further definitions and procedures to determine QF status, described more fully in each section below.

Pursuant to § 292.205(d) of the Commission's regulations, the Commission may waive the operating and efficiency standards "upon a showing that the facility will produce significant energy savings."²¹ Order No. 70 also set forth criteria for the ownership of QFs so as to limit ownership of qualifying QFs to entities

not primarily engaged in the generation or sale of electric power.²²

The Commission proposes to revise its procedural and technical rules to reflect experience with the QF program. Moreover, the Commission solicits comments on any procedural or technical modifications to the rules that may have been overlooked. By proposing these clarifying changes the Commission is satisfying its continuing obligation to review its policies and rules that encourage cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for electric consumers, and thereby fulfill its statutory responsibilities under PURPA.²³

III. Proposed Procedural Modifications

A. Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A single response may be a notice of qualifying status. As discussed *infra*, under the Paperwork Reduction Act, section IX, the information collection burden is estimated to be substantially shorter under the self-qualification method than under the application certification procedure. The eight hours indicated above is a weighted average reflecting the projected number of both types of those filings as well as the length of time to complete a particular filing. Send comments regarding this burden estimate, or any other aspect of this collection of information; including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Kenneth Thomas at (202) 357-5253) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

B. Commission Certification Versus Self-Qualification

1. Background

The original Notice of Proposed Rulemaking (NOPR) that the Commission issued to implement

sections 201 and 210 of PURPA²⁴ required that any person seeking qualifying status for a facility: Initiate discussions with the utility with which it wished to interconnect; and file an application with the Commission. This was intended to resolve potential problems between the applicant and affected electric utility early in the development of a QF, as well as ensure that an applicant consider the suitability of its facility for interconnected operation.

Most of the comments received on this proposed regulation favored eliminating the filing requirement either for all qualifying facilities or for specific classes of facilities. These commenters argued that the complexity, delays, and uncertainties caused by case-by-case certification would act as a significant economic disincentive to owners of small facilities. One utility²⁵ proposed having regulations on an "exception" basis where the utility, state regulatory authority, or other interested party could object to the granting of qualifying status.

In the final rule,²⁶ the Commission eliminated the requirement that all persons seeking status as a QF must file an application with the Commission. The Commission stated:

The Commission believes the initiation of purchase and sale arrangements * * * will necessitate the flow of information between potential qualifying facilities and affected electric utilities. The Commission therefore notes that the requirements contained in the proposed rule both for discussions between a potential qualifying facility and the utility with which it wishes to interconnect and for the filing of substantial information with the Commission are not necessary.²⁷

The final rule provides that any small power producer or cogenerator which meets the criteria for qualification set forth in § 292.203 of the Commission's rules is considered a qualifying facility. Facilities meeting these requirements need only provide notice to the Commission of their status in order to be eligible for PURPA benefits. This is commonly referred to as self-qualification.

Under the statute, Commission certification of a facility's eligibility for PURPA benefits is unnecessary. However, the Commission did provide

Order No. 69, 45 FR 12,214, FERC Statutes and Regulations, Regulations Preambles 1977-1981 § 30.128 (1980); *Small Power Production and Cogeneration Facilities—Qualifying Status*, Order No. 70, 45 FR 17,959, FERC Statutes and Regulations, Regulations Preambles 1977-1981 § 30.134 (1980); *order on reh'g* (of Order Nos. 69 and 70), 45 FR 33,958, FERC Statutes and Regulations, Regulations Preambles 1977-1981 § 30.160 (1980). *American Electric Power Service Corp. v. FERC*, 675 F.2d 1226 (1982), *reversed in part*, *American Paper Institute v. American Electric Power Corp.*, 461 U.S. 402 (1983).

¹⁹ The Commission declined to include any fuel use criteria in its definition of qualifying cogeneration facilities. The United States Court of Appeals for the District of Columbia Circuit affirmed the Commission with respect to fuel use, holding that the statute did not require the Commission to establish separate fuel use criteria and that the Commission's regulations "were a reasoned, adequate response to the charge Congress gave it." *American Electric Power Service Corp. v. FERC*, 675 F.2d 1226, 1241 (DC Cir. 1982).

²⁰ 45 FR 17960, FERC Statutes and Regulations, Regulations Preambles 1977-1981 § 30.134 at 30933.

²¹ 18 CFR 292.205(d) (1987).

²² 45 FR 17970, FERC Statutes and Regulations, Regulations Preambles 1977-1981 § 30.134 at 30,953. Ownership criteria are set forth at 18 CFR 292.206 (1987).

²³ 16 U.S.C. 2601 *et seq.* (1982).

²⁴ Docket No. RM79-54, 44 FR 38822, FERC Statutes and Regulations, Proposed Regulations 1977-1981, § 32.024 (1981).

²⁵ Pacific Gas and Electric Co.

²⁶ Order No. 70, 45 FR 17971, FERC Statutes and Regulations, Regulations preambles 1977-81 § 30.134 and 30.954.

²⁷ 45 FR 17962, FERC Statutes and Regulations, Regulations Preambles 1977-81 § 30.134 at 30,938.

for an alternative approach under which developers with novel technologies or approaches could seek certification of their status by the Commission. This provision of the rules was viewed as a means of resolving disputes.

2. Problem

Currently, in order to have qualifying status a facility must either follow a self-qualification procedure or apply for and obtain Commission certification.

Although notices of self-qualification have comprised approximately 50 percent of applications received, it is unclear why self-qualification has not been utilized to an even greater degree. Apparently, the biggest obstacle is the reluctance of financial institutions to back projects without the Commission's "seal-of-approval." For example, one applicant specifically stated that the lenders to the project required Commission certification as a QF as a condition to the project's financing.²⁸ To the extent such "forced" filings delay bringing eligible facilities into service and therefore increase the cost of facilities entering into production, the development of cogeneration and small power production is discouraged, contrary to the intent of Congress.

Although the Commission cannot force financial institutions to back self-qualified projects, we can address the likely cause of their reluctance to do so. This reluctance may be the result of uncertainty over eligibility for PURPA benefits. If so, the clarifications suggested in this proposed rule, as well as the development of standardized applications for Commission certification, should alleviate the problems.

Such clarifications may not address, however, all of the problems that make financial institutions reluctant to finance self-qualified projects. Apparently, some electric utilities and state regulatory agencies use Commission certification as a prerequisite for dealing with electric utilities.²⁹ Such a requirement may be designed to distinguish *bona fide* QFs in order to assure that the benefits of cogeneration and small power production are actually realized when purchases are made. However, such a requirement is contrary to the Commission's rules. The Commission reemphasizes utilities' obligation to offer to interconnect with, purchase from, and sell to self-qualified facilities. Commission certification is not

necessary to qualify facilities for these PURPA benefits; self-qualification is sufficient.

3. Proposed Solution

The Commission recognizes the concerns implicit in distinguishing *bona fide* QFs from power producing facilities not entitled to the benefits of PURPA. In an effort to address these issues and to lend more credence to the self-qualification option, the Commission proposes that instead of a self-qualification notice, a QF file an affidavit, with the Commission, signed by the facility's owner, operator, or authorized representatives which provides a basic description of the facility as required by the existing rules and a statement that the facility meets the Commission's criteria. The advantage of such a statement is that, since it is a legally binding document, it provides greater assurances of a facility's qualifying status than the minimal filing now required.

Where it is clear that a facility meets the Commission's criteria, there is little risk to attesting to its eligibility for PURPA benefits. If QF developers do not have the expertise to determine whether they meet the requisite criteria to supply an affidavit, they could employ industry "experts" to do so. The Commission has tentatively concluded that an affidavit would provide utilities and state regulatory authorities adequate assurance that a facility is not being misrepresented, and that it does provide the inherent benefits associated with cogeneration or small power production. As such, the demand for Commission certification should be lessened.

The Commission also proposes that a self-qualifying facility provide the same affidavit to the utility it expects to deal with. The Commission proposes that the utility be afforded 90 days after receipt of the affidavit to file objections with the Commission regarding such qualification. Absent filing such an objection the utility would be obligated to deal with such facilities pursuant to our rules without insisting upon Commission certification. The Commission does not wish to encourage needless paperwork or expend time and resources unnecessarily; therefore, the Commission solicits comments on ways to discourage the filing of frivolous objections.

The Commission also solicits comments on what information should be included in the affidavit, both to satisfy the Commission's need for information and to facilitate utilities' ability to determine whether to object. The Commission also invites comments on what procedural steps might be

appropriate after an objection is filed. Assuming that the Commission retains the certification procedure, one option for resolving objections could be a limited certification review process.

The Commission also solicits comment on the continued need for the opportunity to obtain Commission certification. Our review of QF applications for certification suggests that in many such applications, eligibility for qualifying status is easily ascertained. These facilities should use the self-qualification option and not the Commission certification option. If the Commission certification option were eliminated, facilities employing those novel technologies applications and ownership arrangements for which Commission certification was originally designed could apply for a declaratory order under the Commission's rules.³⁰ The benefits of a separate procedure appear negligible, and the option of self-qualification may never be fully successful as long as the opportunity for Commission certification remains. The Commission, therefore, solicits comments on the possibility of eliminating the procedure for Commission certification. In the event the Commission concludes that the option of Commission certification is no longer necessary, and eliminates the possibility for such certification, the sections of the rules concerning the certification process for which revisions are being proposed may be omitted from the final rule.

c. Qualifying Facility Certification Application Filing Requirements

1. Background

Of the 3,998 QF filings made from the beginning of the QF program through December 31, 1987, 2,011 have been applications for certification by the Commission. Although approximately 50 percent of these have been filed in complete form and have been processed routinely, incomplete filings have created problems. Deficient filings result in staff requests for supplemental data, which delay the ultimate decision on the application. Deficient filings have not been entirely the fault of the applicants, but may also result from modifications to the information required for certification due to case precedent as the QF program has evolved.

Information submitted in a certification application is presently specified in the regulations in broad terms and subsequent case law has necessitated additional information to

²⁸ Ecogen One Partners Ltd., Docket No. QF87-615-001 (1988).

²⁹ See, e.g., application by McKee Products, Inc. in Docket No. QF86-902-001, 43 FERC ¶ 61,534 (1988).

³⁰ 18 CFR 385.207(a)(2) (1987).

be filed. In practice, precise measures have been developed to aid in using these broad guidelines. Moreover, the Commission has confronted a variety of situations not explicitly anticipated when the original rules were issued. Novel combinations of technologies, energy sources, heat uses and business arrangements have occurred that have required the Commission to interpret the proper application of its rules in acting on individual certification filings. Thus, applicants must often examine not only the basic language of the regulations but also the history of related cases in order to file a complete application. This can be burdensome for applicants, who may not have ready access to Commission resources. For some applicants, a filing for QF certification may be the initial and only time they deal with this Commission.

2. Proposed Solution

In the event the Commission continues to use the certification option, the Commission proposes to explicitly outline its information requirements by incorporating two standardized application forms in our regulations. Specifically, the Commission proposes to delete § 292.207(b)(3) and (b)(4) from the current rules and replace them by adding § 292.207(b)(2)(i), which would contain the form for applicants requesting certification of a facility as a small power production facility, and § 292.207(b)(2)(ii), which would contain the form for applicants requesting certification of a facility as a cogeneration facility. Applicants would use such forms for all applications for certification. By incorporating the specific information required by the rules, the Commission seeks to make it easier for the public to apply for certification, to reduce the number of deficiency letters from staff, and to eliminate unnecessary delays in processing certification applications. The Commission solicits comments on the adequacy of the data request in the proposed forms. The Commission notes that any form would require some degree of flexibility since the uniqueness of individual facilities and novel applications will occasionally require supplemental data submissions.³¹

3. General Contents of Applications For Commission Certification

All applicants, whether small power producers or cogenerators, must file a common set of information. The

Commission proposes to continue requiring identifying information such as the name and address of the applicant and the location of the facility. The Commission proposes to require additional information in order to accelerate routine processing and evaluation of applications. The telephone number of a person with direct knowledge of the application should be provided. Either the owner or operator may be the applicant. Also, the location of the facility should include the state, county, town and street address if known.

Electric utility interests in QFs present the Commission with special information needs.³² Information is required with respect to the identity of the owner of the facility and the percentage of equity ownership by any electric utility or electric utility holding company. The Commission proposes to require that the applicant provide a statement as to whether or not an electric utility, electric utility holding company, or any combination thereof, has or will an ownership interest in the facility, and to require copies of relevant agreements.

The Commission further proposes the following data requirement: Description of the facility; identification of the principal components (such as boilers, prime movers, and electric generators); and a narrative sufficient to identify any characteristics of the facility that the applicant believes may bear upon its qualification status.

The Commission also proposes that the energy source to be used by the facility be identified in terms of: wastes; renewables, such as water, solar and wind; geothermal resources; fossil fuels, such as coal, oil or natural gas; and biomass. A description of the energy source is also required (e.g. if biomass, the applicant should describe its form, such as landfill gas, municipal solid waste, wood waste from logging, etc.).

The Commission requires sufficient information to verify that the small power producer's capacity is below the 30 megawatt threshold for exemption from FPA rate regulation and 80 megawatt threshold for qualifying small power production status. This requires an indication as to the power production capacity of the facility as defined in new § 292.202(s).

For the definition of power production capacity, the Commission will use the standard set forth in *Occidental Geothermal Inc.*,³³ where the

Commission stated that the power production capacity of a facility is the maximum net output of the facility, as measured at the busbar, which can be safely and reliably achieved under the most favorable operating conditions likely to occur over a period of several years.³⁴

4. Application Requirements for Small Power Production Facilities

The Commission proposes to modify application requirements for small power production facilities. For purposes of verifying the eligibility of a small power production facility for qualifying status, the applicant should indicate not only whether the facility is within one mile of other small power production facilities owned by the applicant and uses the same energy source, but also the identity and individual power production capacities of such facilities.³⁵

In addition to the annual energy input of any natural gas, oil or coal, the Commission proposes to require the percentage of total energy input to the facility for each.

The Commission also proposes that small power producer applicants demonstrate that any wastes that are both primary energy sources and not included in the proposed list of wastes meet the Commission's proposed "no current commercial value" test.³⁶

5. Application Requirements for Cogeneration Facilities

The Commission proposes certain changes to the application requirements for cogeneration facilities. Currently, the Commission's regulations simply require a description of the cogeneration system as to whether it is a topping- or bottoming-cycle facility, the date installation of the facility began, and "sufficient" information to determine compliance with "any applicable requirements under § 292.205." No other specifics are provided. Consequently, many cogeneration certification filings provide inadequate information for approval.

The review of cogeneration certification applications primarily focuses on whether the facility conforms to the requirement for sequential use of energy, and the operating and efficiency standards. Therefore, it is essential for applicants to provide a cycle diagram that depicts the facility's sequential use

³¹ See discussion in *Power Production Capacity*, *infra*.

³² See *Windfarms, Ltd.*, 13 FERC ¶ 61,017 (1980).

³³ See discussion in *Waste, infra*. See *Kenvil Energy Corp.*, 23 FERC ¶ 61,139 (1983); *Electrodyne Research Corp.*, 32 FERC ¶ 61,102 (1985).

³¹ For example, in *McKee Products, Inc.*, 43 FERC ¶ 61,534 (1988), the Commission considered whether kinetic energy produced as the result of moving rocks down conveyor belts constitutes waste.

³² See *Ultrapower 3*, 27 FERC ¶ 61,094 (1984).

³³ 17 FERC ¶ 61,231 (1981).

of energy, and which allows verification of the other technical data. Quantitative information must be submitted regarding the energy flows pertinent to evaluation of the facility's compliance with the operating and efficiency standards.

To determine compliance with the operating standard, the Commission must be able to validate the data used by the applicant in its calculation of the standard.³⁷ The Commission must also be able to validate the data used by the applicant in its calculation of the facility's compliance with the efficiency standard. In view of this, the Commission proposes to require that an applicant submit a legible cycle diagram. The cycle diagram should depict the physical arrangement of the system components and show system energy flows and conditions (i.e., fuel flow inputs, working fluid flow rates, temperature, pressure and enthalpy at inputs and outputs of prime movers and at delivery to useful thermal energy applications). A demonstration of compliance with the efficiency standard for topping-cycle oil and gas cogeneration facilities with less than 50 percent use of these fuels will no longer be required.³⁸

The Commission also proposes that data be submitted that indicate separately the annual energy input from each energy source (such as natural gas, coal, or oil) in terms of quantity consumed and Btu content. Btu content determinations using the standard industry Lower Heating Value for gas and oil will remain unchanged. Where appropriate, separate data pertaining to gas or oil used for supplementary firing would be required.

The Commission proposes to modify its requirements for energy output information, as well as its requirements for energy input information. Data pertaining to the annual useful power output (net electrical output and net mechanical output, if applicable) and annual useful thermal energy output (topping-cycles) will be required. More specifically, the useful thermal energy output information should address any heating, cooling or process uses for external industrial or commercial purposes, and should include a description of each such process.

Additional information is required for verification of the useful thermal output. For heating or cooling uses, the

applicant would be asked to identify the aggregate annual use, factoring hourly and seasonal variations into the calculation of the annual total. For process uses of thermal energy, the applicant would be asked to identify the output available for use (i.e., actually delivered to process) and also provide the enthalpy (Btu/lb), pressure (psia), average flow rate (lbs/hr) and temperature (deg-F) of working fluids that deliver the thermal output to process, and of any return from process.

For purposes of demonstrating conformance with the operating and efficiency standards, the annual aggregate thermal energy input and output due to any supplementary firing must be provided in terms of Btu content.

D. Administration of The 90-Day Certification Period And Rejection Of Applications For Noncompliance

An application for Commission certification of qualifying status is filed with the Secretary's Office pursuant to § 292.207 of the Commission's regulations. Section 292.207(b)(5) provides that an order granting or denying the application, setting the matter for hearing or "tolling" the time for issuance of an order will be issued within 90 days of the filing of a complete application. There appears to be some confusion on the part of many applicants as to when this 90-day frame starts.

The Commission proposes to clarify that the 90-day time period for Commission action does not begin until all the information needed to complete the application has been submitted. In approximately 50 percent of all applications, the information supplied by an applicant is insufficient to verify that a project meets the Commission's QF requirements. In such cases, a determination of qualifying status is not possible and additional information is requested from the applicant. The 90-day period does not commence running until a complete application is received—e.g., until the receipt of all information filed in response to deficiency letters.

E. Effect of OF Project Modification on Qualifying Status

Section 292.207(d)(2) of the Commission's rules implementing PURPA provides that a previously certified qualifying facility may petition the Commission for a ruling on whether a prospective change to the facility would affect its qualifying status.³⁹

Currently, no distinction is made between petitions under this rule and an original application for qualifying status certification under § 292.207(b). Payment of a substantial filing fee has been required⁴⁰ and lengthy review by Commission staff, including publication of a notice in the *Federal Register*, has unnecessarily delayed action for many simple project modifications.⁴¹

Assuming that the Commission retains its certification process, the Commission is reevaluating the need to subject all "recertification" filings to the same degree of scrutiny as the initial application for certification of qualifying status. The current approach to QF project modification appears unnecessary and overly burdensome. In many cases, proposed changes to a qualifying facility are minor in nature and clearly would not affect a facility's qualifying status. Of course, such changes could and should be handled through self-qualification. But in the event Commission certification is sought, such changes should be approved (or "certified") in an expedited manner. In most cases, the "difficult" questions (such as does the facility apply its thermal output to a "useful" purpose) have already been answered in the original certification. Thus, the effort required to evaluate these changes typically will be substantially less than that required for the original certification and does not warrant charging petitioners the § 292.207(b) filing fee or subjecting the petition to protracted review.

Streamlining the review of § 292.207(d)(2) petitions should reduce administrative burdens for both the Commission and QFs. Consequently, the Commission proposes to allow QFs undertaking certain changes to their facilities to maintain their qualifying status by simply notifying the Commission of the particular change. To facilitate this process, the Commission would include a list of such modifications for convenient reference. Notification would take the form of a letter to the Commission describing the

(2) Prior to undertaking any substantial alteration or modification of a qualifying facility which has been certified under this section, a small power producer or cogenerator may apply to the Commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status.

⁴⁰ In a separate rulemaking (RM87-28-000), filing fees for Commission certification as a QF were recently increased to \$4,310 for cogenerators and \$6,560 for small power producers.

⁴¹ Currently an order usually takes at least 30 days from the publication of the notice of the change in the *Federal Register* since interested parties are usually given that long to intervene.

³⁷ The 5 percent operating standard requires a comparison of the facility's useful thermal output (made available for use in an external commercial or industrial process, or used in a heating or cooling application) to the total energy output (the sum of the useful thermal and power outputs).

³⁸ See discussion in Efficiency Standard Calculations, *infra*.

³⁹ Section 292.207(d)(2) states that:

change in sufficient detail that the Commission can readily determine that it would not affect a facility's status. For changes identified below the Commission would return a copy of the letter to the applicant stamped "approved."

It is possible, however, that certain modifications would substantially alter the basic characteristics of the facility and therefore would entail a more detailed and thorough review. For example, significant decrease in efficiency or in the operating standard calculations (particularly when a facility's previous eligibility was borderline) or changes in the technical design of a facility can affect a facility's qualifying status. Petitions for such major modifications are more appropriately treated as an original filing for certification of qualifying status. Therefore, should continued Commission certification be sought, fundamental changes in the design or operation of a facility would need to be reviewed under § 292.207(b). If a proposed change could not be stamped "approved," it would be treated as a section 207(b) filing with the required fee assessed.

1. Examples of Changes That Would Not Affect QF Status

For purposes of the above proposal, the following is a nonexhaustive list of changes to a QF that would clearly not affect its qualifying status. This means that it is readily evident from a review of a letter describing the change that the qualifying status of the facility would not be affected. Initially, the Commission proposes the following list of changes:

- A change in the name of the corporation or partnership owning the QF.
- A change in the ownership of a small power production facility if the new and remaining owners are unaffiliated with an electric utility, electric utility holding company or combination thereof.
- A change in the ownership of a cogeneration facility if (1) the new and remaining owners are unaffiliated with an electric utility, electric utility holding company or a combination thereof, and (2) the user of the thermal energy produced by the cogenerator is unaffiliated with the cogenerator.
- A change in the location of a proposed qualifying small power production facility if the new location is not within one mile of any other small power production facility and is owned by the same parties and uses the same primary energy source.

- A decrease in the amount of natural gas or oil used by a cogeneration facility if the efficiency and operating standard calculations for the facility remain at or above the minimum limits for those standards.

- A decrease in the amount of fossil fuel used by a small power production if the total use of fossil fuel remains below the limit for the fuel use.

- A change in the primary energy source of a small power production facility if the new energy source is biomass, renewable resources, geothermal resources, one of the waste energy sources in our proposed list, or any combination thereof.

- A change in the energy source of a cogeneration facility if the new primary energy source does not result in an increase in the facility's use of natural gas or oil.

- An additional use of a cogeneration facility's thermal output if the original uses are maintained as specified in the original certification order.

- An increase in the efficiency or operating standard calculation of a cogeneration facility.

- A change in the power production capacity of a small power production facility, if the facility capacity does not exceed the capacity limit established for that particular type of facility.

- A change in the power production capacity of a cogeneration facility if the efficiency and operating standard calculations for the facility remain at or above the minimum limits for those standards.

The Commission requests comment on the appropriateness of these changes and any additional changes to QFs that could be included.

IV. Proposed Technical Modifications for Both Small Power Production and Cogeneration Facilities

A. Electric Utility Ownership of QFs

1. Background

Under sections 3(17)(C) and 3(18)(B) of the FPA as amended by PURPA, a QF can only be "owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)." ⁴² The Conference Report explained:

The terms "qualifying small power production facility" and "qualifying cogeneration facility" exclude facilities which are owned by a person who is primarily engaged in the generation or sale of electric power. Electric utilities may participate in an entity which owns such facilities with other

persons and such entity could qualify under these definitions. The test of this case is whether the entity which owns the facility is primarily engaged in the generation or sale of electric power other than in connection with its ownership of the cogeneration facilities or small power production facilities. ⁴³

In its Notice of Proposed Rulemaking (NPR) leading to the adoption of its current ownership criteria, ⁴⁴ the Commission stated:

[Under a literal interpretation of the Conference Committee's statement, several electric utilities could form a subsidiary which owned small power production or cogeneration facilities. Such a subsidiary would constitute an entity which is not primarily engaged in the generation or sale of electric power other than in connection with its ownership of cogeneration or small power production facilities. Under such an interpretation the subject facility would be eligible to receive qualifying status. ⁴⁵

In its final rule, the Commission noted that several commenters to the NPR agreed with the Commission that, under a literal interpretation of the Conference Report, electric utilities could form subsidiaries which would own QFs, and such subsidiaries would not be "primarily engaged in the generation or sale of electric power other than in connection with its ownership of cogeneration or small power production facilities." ⁴⁶ Thus, utility subsidiaries could own cogeneration and small power production facilities without such facilities' losing their qualifying status.

However, the Commission declined to adopt this position in its final rule, restating its conclusion as contained in the proposed rule that the thrust of section 201 was to limit the advantages of qualifying status to facilities which are now "owned primarily" by electric utilities or their subsidiaries. ⁴⁷ The Commission concluded that the rulemaking comments did not provide sufficient reasons to change the limitation on utility ownership of 50 percent that had been included in the proposed regulation. ⁴⁸

⁴² H.R. No. 1750, 95th Cong., 2nd Sess. 89, reprinted in 1978 U.S. Code Cong. & Ad. News 7797, 7823, and in FERC Statutes and Regulations § 5151 at 5097.

⁴³ Docket No. RM79-54, 44 FR 38822, FERC Statutes and Regulations, Proposed Regulations 1977-1981 § 32.028 at 32.333 (1981). The ownership criteria are codified at 18 CFR 292.206 (1987).

⁴⁴ Docket No. RM-79-54, 44 FR 38822, FERC Statutes and Regulations, Proposed Regulations, 1977-1981 § 32.028 at 32.333 (1981).

⁴⁵ See Order No. 70, Final Rule, Small Power Production and Cogeneration Facilities—Qualifying Status, Docket No. RM79-54, 45 FR 17959, FERC Statutes and Regulations, Regulations Preambles 1977-1981 § 30.134 at 30.953 (1980).

⁴⁶ *Id.*

⁴⁷ In orders on rehearing of Order No. 70, the Commission permitted gas utility holding companies

⁴⁸ 16 U.S.C. 796 (17)(C) and (18)(B) (1982).

In fashioning its ownership restriction, the Commission has equated ownership interest with equity interest.⁴⁹ In so doing, the Commission has determined that it must review two elements in order to determine a participant's "equity interest" in a QF project—(1) the entitlement to profits, losses and surplus after return of initial capital contribution (i.e., the stream of benefits) and (2) the share of control of the venture.⁵⁰ The latter element must be reviewed in order to evaluate whether the utility participant is able to alter the allocation of benefits among the project participants:

[The Commission's] examinations have focused on voting interests as well as special agreements (such as service control contracts) between utility partners and the partnership. The result sought is to avoid utility interest manipulation of the benefits flowing from a facility such that the utility would gain some undue advantage vis-a-vis other investors in the facility.⁵¹

In several orders applying the equity interest test, the Commission has held that:

(a) A utility developing a QF under a partnership arrangement with a non-utility is limited to 50 percent of the partnership's stream of benefits. However, the utility's initial contribution to capital may exceed 50 percent of total capitalization, depending on how the contribution is structured.⁵²

(b) A lack of utility control over management of the facility does not entitle the utility limited partner to receive more than 50 percent of the profits of a venture.⁵³

and electric utility holding companies found by the Securities and Exchange Commission to be "exempt holding companies" under sections 3(a)(3) and 3(a)(5) of the Public Utility Holding Company Act (PUHCA) to wholly own QFs. Order No. 70-B, 45 FR 52,779, FERC Statutes and Regulations, Regulations Preambles 1977-1981 ¶ 30,176 (1980); Order No. 70-C, 45 FR 66,787, FERC Statutes and Regulations, Regulations Preambles 1977-1981 ¶ 30,193 (1980). Section 3(a)(3) of PUHCA allows an exemption when the holding company is only incidentally a holding company and is primarily engaged in another business. Section 3(a)(5) allows an exemption when the holding company is such only with respect to foreign public utilities.

⁴⁹ See 18 CFR 292.206(b) (1987).

⁵⁰ See *Ultrapower 3*, 27 FERC ¶ 61,094 (1984); *KP Diversified Investors, Inc.*, 32 FERC ¶ 61,013 at 61,050 (1985).

⁵¹ *Dominion Resources, Inc.*, 43 FERC ¶ 61,079 at 61,251 (1988). See also *Ultrapower 3*, 27 FERC at 61,094; *CMS Midland, Inc.*, 38 FERC ¶ 61,244 at 61,827 (1987); *Prodek/Hydro Resources Joint Venture*, 41 FERC ¶ 61,152 (1987).

⁵² *Ultrapower 3*, 27 FERC at 61,184.

⁵³ *KP Diversified Investors*, 32 FERC ¶ 61,013 at 61,050.

(c) Disparate capital contributions are permitted where such contributions are to be reflected in the partnership accounts as debt of the partnership, and profits are allocated equally between the partners.⁵⁴

(d) A utility may lend money to a QF in which it has an interest in amounts greater than 50 percent of the capitalization, so long as its share of the profits remains within the 50 percent limit. Depending on how it is structured, a "preferred stock" type interest may be considered debt rather than equity.⁵⁵

(e) Where a partnership agreement provides for disparate or unspecified allocations of the stream of benefits between utility and nonutility partners over any period during the life of the project, such allocations must reflect the time value of money such that the utility would not receive more than 50 percent of the stream of benefits.⁵⁶

In applying the equity interest test in § 292.206(b), the Commission has invoked an "upstream" requirement, imputing subsidiary ownership of a QF to an electric utility or electric utility holding company parent, thus disallowing qualifying status where the subsidiary's equity interest in the QF exceeds 50 percent.⁵⁷

The Commission's most recent application of the "upstream" test was in *Dominion Resources, Inc.* (*Dominion*).⁵⁸ In applying the "upstream" test, the Commission noted that § 292.206(b) of the current regulations deals with the attribution of ownership of a QF by subsidiaries of electric utilities rather than the extent of that ownership. The Commission adopted *Dominion's* modified proposal that the parent company's equity interest, for purposes of the 50 percent rule of § 292.206(b), should be determined by looking to the parent's derivative share in the QF, that share being a function of its percentage share (determined by its share in the subsidiary) in the subsidiary's share of the facility.⁵⁹ However, the requirements of § 292.206 will not be met if an electric utility or electric utility holding company holds more than a 50 percent interest in, or control of, a subsidiary and that subsidiary holds

more than a 50 percent interest in, or control of, the facility.⁶⁰ The Commission further held that:

A facility will meet the ownership requirements of PURPA as implemented by our regulations so long as the interest in the stream of benefits and control by a utility or utilities, by whatever mechanism used, does not exceed 50 percent. As was always the case, the subsidiary's interest in the qualifying facility will be imputed to its parent. However, the interest of the parent will be determined as described above, and control will be examined to make sure the limitation is met, for purposes of determining whether the 50 percent rule has been exceeded.

Several commenters at the Commission's Conferences on PURPA⁶¹ suggested that allowing electric utility subsidiary ownership of up to 100 percent of a QF could advance the purposes of PURPA.⁶² They maintained that by drawing on the experience and related expertise of personnel available from electric utilities, more efficient and reliable facilities could be constructed and that the PURPA goals of electric energy conservation, optimization of facility efficiency and equitable rates to electric consumers would be better served.⁶³ Some commenters also argued that removal or relaxation of the 50 percent ownership restriction would serve to make for more equitable treatment of the utility industry by allowing electric utilities' customers to have a greater share of the benefits of cogeneration.⁶⁴

Several commenters suggested that self-dealing may be guarded against by either requiring the 100 percent subsidiary-owned QF to be located outside of the parent utility's service territory or simply prohibiting the subsidiary-owned QF from selling back to the parent utility, or holding company

⁶⁰ *Id.* at 61,251.

⁶¹ Docket No. RM87-12-000, 52 FR 2552 (1987).

⁶² See Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Southern California Edison Co. at 7; Gulf States Utilities Co. at 11; Middle South Utilities, Inc. at 2-4; Virginia Power Co. at 18-19; Commonwealth Edison Co. at 4; Baltimore Gas & Electric Co. at 5-6; Public Utilities Commission of Ohio at 2-3; Illinois Commerce Commission at 12; Colorado-Ute Electric Association, Inc. at 11.

⁶³ See, e.g., Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Georgia Power Co. at 20; Virginia Power Co. at 18; Southern California Edison Co. at 7; Statement of J.L. King, Senior Vice Pres. System Executive Operations, Middle South Utilities, Inc. at 4.

⁶⁴ See Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Southern California Edison Co. at 7; Statement of J.L. King, Senior Vice Pres.-System Executive Operations, Middle South Utilities, Inc. at 4.

⁵⁴ *Beowawe Geothermal Power Co.*, 33 FERC ¶ 62,205 (1985).

⁵⁵ *CMS Midland, Inc.*, 38 FERC at 61,828.

⁵⁶ *Prodek/Hydro Resources Joint Venture*, 41 FERC ¶ 61,152 (1987).

⁵⁷ The first statement of the test as "upstream" is provided in Order No. 70-D, Docket No. RM79-54, 46 FR 11251 at 11252, FERC Statutes and Regulations, Regulations Preambles 1977-1981 ¶ 30,234 at 31,475 (1981).

⁵⁸ 43 FERC ¶ 61,079 at 61,250 (1988).

⁵⁹ *Id.*

system.⁶⁵ Other commenters, however, opposed allowing electric utility subsidiaries to own over 50 percent of a QF. Among their arguments were that: (1) There might be a possible bias toward the sort of projects with which utilities are most familiar;⁶⁶ (2) utilities would favor projects owned by their subsidiaries;⁶⁷ and (3) the existing rule represented a reasonable compromise between customer and shareholder interests.⁶⁸ One state commission suggested that decisions to allow utilities to participate in cogeneration be made on a state-by-state basis.⁶⁹ However, another commenter suggested that federal guidelines were needed, because state-by-state results were likely to vary, to no one's advantage. The commenter also suggested that the Commission gather comments on organizational and financial separation.⁷⁰

2. Discussion of Issues

a. *Introduction*—As the above discussion of Commission orders indicates, the current regulations and policy on electric utility ownership of QFs require the Commission to engage in an examination of the stream of benefits and management organization of QF projects on a case-by-case basis. These examinations often involve determinations about appropriate discount rates, what is or is not a benefit, whether a particular preferred stock is equity or debt, and who can exercise control over the business venture. The process may become more difficult to administer should analyses become more complex. However, a codification of our existing precedent

could help eliminate such administrative difficulties.

Aside from administrative inefficiencies, the Commission's current 50 percent ownership restriction may not be the best means for achieving the policy objectives of PURPA. The present rule may be too lenient in some circumstances, and too strict in others. Limiting utility equity participation to 50 percent may unnecessarily restrict the advantages of utility participation where the potential for abuse of monopoly power through self-dealing by an electric utility is low, yet may offer incomplete protection where the potential for abuse is high. On the other hand, the Commission's ownership rule has worked reasonably well. The rule has proven sufficiently flexible to allow utilities to participate in QF projects and, at the same time, appears to offer adequate protection against abuses due to self-dealing in many circumstances.

b. *Concerns Regarding Utility Ownership of OFs*—(1) *Self-dealing*. The legislative history of PURPA does not fully explain the rationale behind the limitation on utility ownership of QFs. The legislative record is clear that none of the drafters wanted to discourage utility ownership of cogeneration. However, one of Congress' concerns was to protect against the potential abuse of monopoly power that might result if electric utilities were exempted from traditional utility regulation.⁷¹ One

means of abusing monopoly power is self-dealing—that a utility may favor its own subsidiary over others. However, the means by which such favoritism may be expressed range from the simple to the exceedingly complex.

Abuses due to self-dealing might arise under a variety of circumstances. A utility might offer a higher price for QF power from its subsidiaries than from nonaffiliated QFs. Alternatively, the price may be no higher, but other contract terms may be more favorable. Self-dealing concerns may also arise in the duration of contract negotiations.

Potential for abuse due to self-dealing may also arise apart from contract negotiations. For states that set avoided cost administratively, a utility subsidiary could be placed "first in line" to avoid the next increment of capacity. Subsequent QFs would receive lower (or no) capacity payments since the utility's capacity needs would already have been satisfied. In such a case, the utility, by purchasing first from its own subsidiary, might indeed skew the payments in favor of its own interests.

The potential for abuse of monopoly power through self-dealing also extends to circumstances beyond the construction of the QF. For example, a utility might be more lenient in enforcing performance standards upon its subsidiary than upon its nonaffiliated QFs. Or, if QF contracts call for dispatchable power, a utility might self-

⁷¹ Early versions of PURPA required that utilities be given the right of first refusal to construct and operate cogeneration facilities before a cogenerator could itself build such a facility. See, e.g., the Cogeneration and Waste Heat Utilization Act (H.R. 6661 and S. 1363); the Electric Utility Act of 1977 (H.R. 6660). These bills also extended tax credits to utilities investing in cogeneration. However, when President Carter proposed the National Energy Act, the ownership of qualifying cogeneration projects was limited to those "to primarily engaged in the generation or sale of electric energy." See section 522(b) of H.R. 6831 and S. 1469, the National Energy Act. In testimony before the House and Senate on the issue of utility ownership, the Federal Power Commission (FPC) agreed that the FPA must be amended to make cogeneration more lucrative for utilities, but expressed concern, however, about relaxing price regulation for utilities by virtue of their ownership of cogeneration since utilities have monopoly power. The FPC commented that both utilities have monopoly power. The FPC commented that both utilities and industrials should be allowed to own cogeneration facilities but only industrials should be assumed to be competitive enough to be freed from price regulation. Response to the Federal Power Commission in Appendix, *Responses to Subcommittee's Request for Answers to Questions on Public Utilities*, in Part 3, Vol. II, National Energy Act, *Hearings Before The Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce*, 95th Cong., 1st Sess. (1977) at 1743-48. Also, witnesses expressed concern that mandatory ownership of cogeneration by utilities would deprive industrials of their independence from utilities and thereby discourage industrial development of cogeneration. See, e.g., Testimony of Mr. Gerald L. Decker in Part 3, Vol. II, National

Energy Act, *Hearings Before The Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce*, 95th Cong., 1st Sess. (1977) at 338.

The bill initially passed by the House, H.R. 8444, contained tax incentives for utilities owning cogeneration facilities, gave utilities the right of first refusal to construct and operate cogeneration plants, and did not contain the Carter Administration's ownership limitation with regard to exempted QFs. See section 546(b) of H.R. 8444, the National Energy Act (introduced by Rep. Ashley), 123 Cong. Rec. 27,244 (Aug. 5, 1977). In contrast, while the Senate bill, S. 2114, was also designed to encourage utility ownership of cogeneration, it did contain the Administration's limitation of utility ownership of exempted cogeneration. See section 12(c) of S. 2114, the Public Utilities Regulatory Policy Act of 1977 (reported by the Committee on Energy and Natural Resources), 123 Cong. Rec. 32,696 (Oct. 6, 1977). With regard to this provision, Senator Johnston explained that the exemption from FPA and PUHCA regulation applies only to persons not primarily engaged in generating and selling electric power, 123 Cong. Rec. 32,391 (Oct. 5, 1977). The Conference Report adopted the Senate's position with no explanation. However, in explaining the ownership restriction, the Conference Report stated that "[t]he test of this [ownership] case is whether the entity which owns the facility is primarily engaged in the generation or sale of electric power other than in connection with its ownership of the cogeneration facilities or small power production facilities." H.R. No. 95-1750, Public Utility Regulatory Policies Act, 95th Cong., 2d Sess. 89 (1978).

⁶⁵ See Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Baltimore Gas & Electric Co. at 5-6; Signal Energy Systems, Inc. (which opposes lifting the 50 percent restriction but, alternatively, supports a service area restriction if utility subsidiaries are to be allowed to have majority ownership) at 5; Virginia Power Co. at 18-19; Oregon Department of Energy at 5-6. See also comments of ELCON at 18.

⁶⁶ Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Massachusetts Executive Office of Energy Resources at 5.

⁶⁷ See Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Massachusetts Executive Office of Energy Resources at 5; Office of Consumers Counsel, State of Ohio at 18; Dow Chemical U.S.A. at 4; Scott Paper Co. at 10; American Paper Institute (initial comments) at 23-24; ELCON at 8.

⁶⁸ Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Alabama Electric Cooperative, Inc. and Allegheny Electric Cooperative, Inc. at 18.

⁶⁹ See Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Public Utility Commission of Texas at 14.

⁷⁰ See Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Renewable Energy Institute at 10-11.

deal by dispatching its own facilities preferentially.

The above forms of self-dealing could be very difficult to identify since there are legitimate reasons for a utility to treat different suppliers unequally. For example, the utility subsidiary might propose a technically superior project. Whether an electric utility concluded contract negotiations with its QF subsidiary more quickly than with others because of favoritism, or simply because the subsidiary proposed a better project, presents very difficult questions. Regulators could face an extremely complicated task in unraveling the utility's motives and might never be able to identify abuses due to self-dealing from the reasonable exercise of management discretion.

Another potential self-dealing problem is the utility's manipulation of the avoided cost when it receives substantial power affiliated QFs. For example, the utility could sign contracts with affiliated QFs that call for the avoided energy cost to be computed on an "as delivered" basis. At some future time, the utility could experience an outage of its coal-fired baseload unit and instead rely on more expensive oil or gas-fired sources. The utility would not incur a financial penalty for this. Rather, the coal-fired unit would remain in rate base, and the higher fuel costs would be passed through to ratepayers in the fuel adjustment clause charge. The avoided energy cost would also rise, resulting in greater profits to the QF subsidiary.

(2) Cross-subsidization.

Another concern with utility ownership of QFs is ratepayer subsidization of the electric utility's QF activities. This concern is not unique to electric utility participation in QFs. Indeed, this same concern arose during Commission consideration of the proposed regulations regarding independent power producers (IPPs).⁷² When a company subject to cost-plus regulation diversifies into an unregulated competitive venture, an incentive develops to pass costs from the unregulated activity on to captive customers of the regulated activity. It is particularly difficult to protect against such behavior when the unregulated activity is in the same field as the

regulated one (as in the case of electric utility ownership of QFs).

The problem of cross-subsidization is not new, however, and the opportunity to misallocate costs arises only to the extent that regulators are unable to separate nonregulated activity costs from native load-related costs. State regulatory agencies have had to deal with these issues many times in the past, and have developed techniques which, although imperfect, allocate costs between regulated and unregulated ventures. Some states require that unregulated activities be placed in separate subsidiaries to simplify accounting demands. Others may forbid diversification altogether.

The Commission tentatively concluded in the IPPs NOPR⁷³ that this problem may be best dealt with by the states, since they have had the most experience with it and because it relates more directly to retail rates. Recent experience suggests that it would be difficult for franchised electric utilities to cross-subsidize.⁷⁴ Generally, franchised electric utilities now face more aggressive state regulators who have experience with policing utility involvement in diversified activities and potential abuses due to cross-subsidies and cost misallocations. Cross-subsidization may also be difficult because industrial consumers, in particular, have considerable ability to vary their demands for electrical energy in response to price increases.⁷⁵ The phenomenal growth of self-service through cogeneration under PURPA, the increasing demands of industrial customers to "shop" for their electrical needs and the "rate discounts" franchised electric utilities are offering their industrial customers to delay cogeneration all attest to the price-sensitivity of industrial customers. In short, misallocations and cross-subsidization may subject the utility to significant regulatory and business risks.

c. Advantages of Greater Electric Utility Participation in QFs. Counterbalancing the concerns with utility participation in QFs are two principal advantages: The utilities' expertise and their access to capital. Many utilities have engineering staff whose experience and expertise could be put to work designing and constructing efficient QFs. Additionally,

many utilities have a substantial flow of internally generated funds available for diversification into other businesses. There may be distinct efficiency gains to be achieved by allowing a utility's particular expertise to be brought to bear in an area not too far afield from its core business.

There are already very competent companies involved in the financing, construction, and operation of QFs. But maximizing the number of participants in the QF market, including utilities, cannot but have positive effects on achieving further efficiencies—to the benefit of consumers.⁷⁶ The existing ownership regulations may impede electric utility participation in QFs even when there is no risk of self-dealing. Allowing for greater participation of electric utilities when the risks of such increased participation are low would encourage the development of efficient QFs consistent with the goals of PURPA.

Furthermore, permitting greater electric utility participation in QFs could also benefit consumers by permitting QFs to become active in power projects that would not qualify as QFs under PURPA. Investors in non-QF power plants are, by definition, electric utilities. QFs, therefore, can only make a minimal investment in non-QF power projects without simultaneously becoming electric utilities and thus subjecting themselves to the Commission's current ownership restriction. As long as electric utility participation in QFs is restricted, QFs cannot participate in non-QF power projects without jeopardizing their QF status.

3. Potential Reforms of Ownership Restriction

Although the Commission recognizes that certain problems have been raised concerning the Commission's current ownership rules, we do not believe that we have an adequate basis at this time to conclude that any change is warranted. The existing rule appears to represent a reasonable compromise between all of the interests involved in the QF industry. However, because questions have been raised as to whether our regulation is fully achieving

⁷² Regulations Governing Independent Power Producers, Docket No. RM88-4-000, 53 FR 9327, IV FERC Statutes and Regulations, Proposed Regulations § 32.456 at 32.114 (1988) [hereinafter IPPs NOPR] (proposing relaxed FPA pricing regulation and streamlined FPA corporate regulation for a class of nontraditional power suppliers that the Commission can categorically conclude lack significant market power).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ The demand-side substitution of energy inputs is discussed generally by James L. Sweeney, *The Response of Energy Demand to Higher Prices: What Have We Learned?* 74 Am. Econ. Rev. (Proceedings) 31-37 (1984).

⁷⁶ The Commission tentatively concluded in Docket No. RM88-5-000, that purchases from QFs fall within the meaning of "another source" under the PURPA section 210(d) definition of "incremental cost of alternative energy." Thus, any reduction in QF costs due to competition resulting from increased number of potential QFs will not only benefit society as a whole, but will also be translated into lower avoided costs and savings to consumers. Bidding NOPR § 32.455 at 32.027.

the purposes of PURPA, the Commission seeks comment on a number of matters.

Where there is little possibility of abuse due to direct self-dealing, the current 50 percent restriction may unnecessarily inhibit electric utility involvement. Where the possibility of abuse of monopoly through self-dealing cannot be ruled out, the present 50 percent equity limitation on utility ownership may not offer complete protection.

The Commission solicits comment on the need to circumscribe direct utility participation in QF projects by a means other than focusing on utilities' equity position. One approach could be to focus on utilities' control of such projects.⁷⁷ The Commission also desires commentary on whether the regulation of utility participation in QFs should parallel the Commission's proposed regulation of IPPs.⁷⁸

⁷⁷ The issue of control has been considered in a number of other contexts which might offer guidance in developing standards for what would constitute control in the instant situation. For example, under the Jones Act, 46 U.S.C.A. 688, which provides a cause of action for seamen who are injured in the course of their employment, seamen have a cause of action if they can show effective control by U.S. interests over foreign ships. Effective control has been defined through a non-exhaustive list of factors, such as the allegiance of the defendant shipowner. Under the Financial Accounting Standards Board accounting standards, the usual condition for control is ownership of a majority (over 50%) of the outstanding stock although the power to control may also exist with a lesser percentage of ownership, e.g., by contract or lease. Under the Federal Trade Commission's Premier Rule § 801.1(b), in the case of an entity that has no outstanding voting securities control means having the right to 50 percent or more of the profits of an entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity, or regardless of its form of organization, having the contractual power presently to designate 50 percent or more of its directors or individuals exercising similar functions.

In contrast to numerical tests, in Order No. 497 (Docket No. RM87-5-000) the Commission adopted a definition of control for identifying affiliates which emphasizes the authority to direct or cause the direction of the management or policies of a business entity rather than a percentage of ownership or voting rights; a 10 percent voting interest creates a rebuttable presumption of control. Similarly, § 240.12b-2 of the Securities and Exchange Commission's regulations defines control as directly or indirectly possessing the power to direct or cause the direction of the management and policies of a person through ownership of voting securities, contract or otherwise. 15 CFR 240.12b-2 (1987).

⁷⁸ Under the Commission's proposed definition of IPPs, a subsidiary of a franchised utility could not sell to the parent subsidiary and qualify for IPP treatment for that transaction. A franchised utility or subsidiary of the franchised utility could only qualify as an IPP for nonaffiliate sales of power. IPPs NOPR at 32,112.

By imposing similar restrictions on utility ownership of QFs and IPPs, it may be possible to avoid the Commission's regulations biasing franchised utilities' investment choices in QFs and IPPs. Absent reform of the current QF ownership regulations, dissimilar treatment of IPPs may create incentives for electric utilities to "game the system." If electric utilities were not allowed to own IPPs selling to affiliates but were allowed to own up to 50 percent of a QF doing so, to the extent the utility wants to make sales to affiliates an incentive would exist to create QFs by adding contrived thermal loads to facilities that would otherwise be IPPs or regulated utility plants. On the other hand, to the extent the utility does not want to engage in affiliate transactions it may avoid OFs and concentrate on IPP projects. It will do this because it can own 100 percent of IPPs, but is limited to 50 percent ownership in QFs. Thus, absent alteration, the Commission's existing ownership restriction may actually discourage the development of QF projects. Parallel regulatory treatment would eliminate the possibility of the Commission's ownership restriction's biasing utilities' choices between IPP and QF projects.

Accordingly, the Commission solicits comments on three potential changes to the regulations regarding electric utility ownership of QFs. The first potential reform on which the Commission seeks comment is a bar against affiliate sales. Congress left it to the Commission to prescribe, by rule, regulations necessary to carry out the purposes of PURPA. As such, the Commission has broad authority to take action necessary to ensure that electric utility ownership of QFs would not undermine the purposes and objectives of PURPA. The abuse of monopoly power through self-dealing may be serving to discourage the development of nonaffiliated QFs. Such action may also undermine the independence of industrial cogenerators. Accordingly, the Commission seeks comment on whether the potential for abuse due to self-dealing is a matter that requires Commission action.

A key concern regarding potential abuses due to self-dealing is that the franchised electric utility can financially benefit by purchasing from its affiliate. Should Commission action be warranted, to successfully protect against potential abuses due to self-dealing the definition of an "affiliate" may have to be structured to eliminate the potential for financial gain due to self-dealing. This suggests that, to fully succeed, franchised electric utilities may

need to be prohibited from purchasing from QF projects in which they own more than a *de minimis* share of the project. Rather than wrestle with how to define "*de minimis*" on a case-by-case basis, the Commission could simply bar any transaction where the purchasing utility has any financial interest.⁷⁹ This bar would be administratively easy to apply, and should not limit the flow of electric utility capital into QF projects.

A restriction on affiliate sales, however, may not need to be imposed without exception. Not all arrangements between electric utility-owned QFs and affiliates necessarily raise self-dealing issues. For example, an East Coast utility that owns several West Coast QFs might find it desirable to have its QFs sell to an affiliate and then have this affiliate act as a broker of the QFs' power. Alternatively, if wheeling can be arranged, the utility could use power from one QF to provide power to other QFs. Since the franchised affiliate would not be involved in the transaction in any way, other than through its ownership of the QFs, self-dealing is not a concern. Also, potential abuses due to self-dealing are unlikely to be a major problem when the electric utility is procuring QF power in a competitive bidding program.

Consequently, restrictions on affiliate sales may not be necessary under a variety of circumstances. It might be possible to accommodate such circumstances by establishing a waiver of any affiliate sale restriction whenever there is limited or no potential for abuse due to self-dealing. One possibility that perhaps should be explored would be to have any prohibition against affiliate sales operate as a blanket restriction, subject to waiver by state regulatory authorities on a case-by-case basis. The state regulatory authorities could review the specific facts of each case for potential self-dealing, and have the authority to grant a waiver where supported by the facts. Alternatively, the waiver could be granted by the Commission upon petition by the QF and affiliated utility and possibly in conjunction with the relevant state regulatory Commission. The Commission invites comments on the possibility of waiving the bar against affiliate sales, how such a waiver should be implemented procedurally, and how it ought to be applied with respect to nonregulated utilities. The Commission also solicits comment on alternative approaches other than a case-by-case waiver that would permit affiliate sales

⁷⁹ It should be noted that such a bar would be prospective only.

when there is little potential for abuse due to self-dealing.

The second change would be the elimination of the "upstream" attribution of ownership provided the previous change barring affiliate sales is adopted. Elimination of such attribution would permit utility subsidiaries to own 100 percent of QF projects. The Commission solicits comment on whether such a change would be appropriate provided that the rulemaking record supports the conclusion that such ownership would foster the purposes of PURPA, and provided that such ownership does not run afoul of the concerns about exempting from FPA regulation those persons that have monopoly power. Electric utility ownership of QFs through subsidiaries may encourage active electric utility participation in QFs while at the same time ensuring that electric utilities' activities in which they have monopoly power remain subject to FPA and PUHCA regulation. Also, eliminating the "upstream" test and permitting electric utility subsidiaries to own 100 percent of QFs would support allowing QFs to own 100 percent of non QF power projects without losing their QF status. They could accomplish this result by either setting up subsidiaries through which to invest in IPPs, or reorganizing so that QFs become a subsidiary of a parent corporation that participates in IPP projects.

Finally, the Commission seeks comment on the advisability of adopting a revenue test for defining when a company is "primarily engaged" in the sale of non-QF electric power. Under PURPA, a qualifying facility must be "owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration and small power production facilities)." ⁸⁰ Under a "revenue test," persons whose business is not primarily that of electric utilities, but who may sell some power that is not from a qualifying facility, would be permitted to own QFs. A person could be engaged in both QF and non-QF power transactions and not be deemed "primarily engaged," provided that power transactions did not constitute that person's primary business. ⁸¹ The

Commission solicits comment on the value of adopting a revenue test, and if so, how such a test should be structured.

The Commission recognizes that any revisions in the ownership criteria should be made effective prospectively. Barring affiliate sales, for example, a new ownership test, if applied to existing projects, could disturb a very large number of contracts. Also, permitting utility subsidiaries to own 100 percent of QFs in combination with an affiliate sales restriction could result in a major reorganization of the electric utility industry's participation in QF projects. Therefore, the Commission solicits comments on whether the Commission, if it were to change its ownership rules, should not only grandfather existing projects and contracts, but also provide for a transition period before any new restrictions would become effective.

Calendar Year

The Commission's rules require all QFs to meet the operating and efficiency standards on a calendar year basis. Small power production facilities using fossil fuels must meet a similar requirement with respect to the proportion of fossil fuel use. Under a strict interpretation of the "calendar year" language, QFs must meet the Commission's standards, on average, between the period of January 1 to December 31 of every year. This interpretation of the calendar year language is clearly overrestrictive and does not reflect the Commission's original intent.

The Commission proposes to clarify its intent by establishing a 12 consecutive month average as the period of applicability for a QF's first year of operation. Under this proposal, QF facilities would be required to meet the Commission's technical standards on an annual basis beginning on the in-service date of the facility. Accordingly, the Commission proposes to replace the phrase "during any calendar year" in §§ 292.204(b)(2), 292.205(a)(1), and 292.205(a)(2) with "on an annual basis beginning with the in-service date of the QF."

V. Proposed Technical Modifications for Cogeneration Facilities

A. Efficiency and Operating Standards

Cogeneration facilities can realize significant fuel savings through the sequential use of energy to produce two forms of useful output, namely electric power and heat, as opposed to the separate production of electric power and heat. To assure that the efficiency inherent in the joint production of power

and thermal energy would be realized, the Commission established an "operating standard" for topping-cycle cogeneration facilities. ⁸² The Commission's standard requires that "[f]or any topping-cycle cogeneration facility, the useful thermal energy output of the facility must, during any calendar year period, be no less than 5 percent of the total energy output." ⁸³

The 5 percent thermal output requirement was the result of a balancing of competing interests. It does not preclude any available technology nor does it bias the choice of fuels. However, the operating standard by itself does not assure the most efficient use of energy. ⁸⁴

In the original rulemaking, therefore, the Commission sought to assure the efficient use of scarce fuels by imposing an efficiency standard on topping-cycle cogeneration facilities using oil or natural gas. Both energy sources were considered to have high strategic value and were subject to pervasive use and price regulation. Strategic concerns have led to extensive efforts to conserve oil and natural gas. These include: The Energy Supply and Environmental Coordination Act of 1974 (ESECA), ⁸⁵ which proposed to deal with the Nation's energy shortages following the oil embargo "by providing for coal conversion," among other things; and the Powerplant and Industrial Fuel Use Act of 1978 (FUA), ⁸⁶ which prohibited, except to such extent as may be authorized under Title II, Subtitle B of the FUA, ⁸⁷

- (1) The use of natural gas or petroleum as a primary energy source in any new electric powerplant;
- (2) Construction of new electric powerplants without the capability to

⁸² A topping-cycle cogeneration facility means a cogeneration facility in which the energy input to the system is first used to produce useful power output, and the reject heat from power production is then used to provide useful thermal energy (18 CFR 292.202(d)). In bottoming-cycle cogeneration facilities the sequence of the two processes is reversed.

⁸³ 18 CFR 292.205(a)(1) (1987).

⁸⁴ For example, calculations show that for a steam turbine cogeneration facility, a 5 percent operating standard improves fuel use efficiency by less than 1 percent—fuel use being measured as the difference in energy requirements of the cogeneration facility and the quantity of energy that would be required if the electric generation and thermal use functions were satisfied separately. A 20 percent operating standard only increases energy savings to 4.2 percent.

⁸⁵ Pub. L. 93-319.

⁸⁶ Pub. L. 95-620.

⁸⁷ Under the provisions of Title II, Subtitle B of FUA the Secretary of the Department of Energy granted exemptions to the gas or oil use prohibition to 38 cogeneration facilities in 1985, 34 in 1986, and 28 in 1987.

⁸⁰ 16 U.S.C. 796(17)(C) and (18)(B) (1982).

⁸¹ So long as power sales are not the primary business, a company can engage in a variety of business ventures without losing its QF status. For example, Company A derives 50 percent of its income from manufacturing widgets, 20 percent from sales of QF power, and 30 percent from sales of IPP power. In this instance, Company A would still have a qualifying facility since power sales in general (and IPP power sales in particular) would not constitute its primary business.

use coal or any other alternate fuel as a primary energy source; and
(3) The use of natural gas or petroleum as a primary energy source in a new major fuel-burning installation consisting of a boiler.

The efficiency standard developed by the Commission was intended to further the conservation of gas and oil by guarding against inefficient use of these fuels in cogeneration facilities. The standard requires that, for topping-cycle cogeneration facilities (that began on or after March 13, 1980) for which any of the energy input is oil or natural gas, the useful power output plus one-half of the useful thermal energy output during any calendar year must be no less than 45 percent of the total energy input of natural gas and oil to the facility when the operating standard calculation is less than 15 percent.⁸⁸ This standard is relaxed to 42.5 percent when the operating standard calculation is more than 15 percent.⁸⁹

No efficiency standard is applied to facilities using other fuels. The major alternative to gas and oil is coal. An abundant domestic supply of coal, free from price and use regulations,⁹⁰ made this unnecessary.

Since the Commission's efficiency standards were promulgated, the nation's natural gas supply picture has improved dramatically and world oil prices have stabilized. So much so, that Congress amended the FUA and the Natural Gas Policy Act (NGPA). The FUA amendments relaxed or repealed many of the restrictions on the use of natural gas and petroleum fuels in new power plants, major fuel-burning installations, and other facilities. Specifically, the amendments allow gas or oil use by certain baseload facilities⁹¹ provided that they certify that they are not precluded from being coal-capable. Those facilities precluded from being coal-capable must seek an exemption from the Department of Energy. The amendment (Pub. L. 100-42)

also removed the incremental pricing requirements under Title II of the NGPA.

Now that government control of the uses and prices of natural gas have largely been removed, questions have arisen as to the continued usefulness of the efficiency standard. Given deregulation of oil and natural gas prices, the efficient use of fuel is ultimately determined by economic considerations, as reflected in the market price of natural gas and oil. Oil and gas prices now reflect their relative scarcity or abundance. As such, it may be argued that choices among alternative fuels should be based on long-term expectations of their price and availability. Prices will encourage the appropriate use and conservation of these fuels.

The Commission raised the issue of the continued appropriateness of its operating and efficiency standards in its regional conferences.⁹² The opinions of the various segments of the electric utility industry differ on the need for and magnitude of the operating and efficiency standards.

Regulated electric utilities essentially agreed that both standards should be increased, but there is a lack of unanimity as to the appropriate level of the increases. Increasing the standards, the utilities argue, would (1) eliminate the "PURPA machines"; (2) bring electric generation and thermal output into a more satisfactory balance; and (3) better fulfill the societal objectives of conserving energy in general, and natural gas and oil in particular. The operating standard most frequently recommended by electric utilities is 25 percent.⁹³ Utilities argue that this is the minimum standard that is needed to attain all the above objectives: it would discourage questionable thermal energy schemes; it would provide for a more satisfactory balance between thermal use and electric power generation; and it would increase fuel use efficiency.

Most regulated electric utilities assert that the current efficiency standard is not very meaningful. The bulk of the oil and gas used by cogeneration facilities is for consumption in combined-cycle units. Modern technology has progressed to a point where normal operation of a combined-cycle facility would readily result in attainment of a 45 percent efficiency standard.⁹⁴ Thus,

utilities argue, as a minimum, the efficiency standard should be raised to 50 percent.

The nonregulated electric utilities that commented on issues relating to "PURPA machines" and the need to change the operating and efficiency standards generally seem to agree with their regulated counterparts.⁹⁵

Cogenerators almost unanimously disagree with this position. Most small power producers concur with the cogenerators that the Commission's current standards for qualification either are adequate or should be reduced. Several reasons are given for this position.

First, with the FUA amendments arguably there is no longer any need for efficiency standards.⁹⁶ Second, for most cogenerators, particularly the large ones, the need to find additional thermal load to meet the requirements of an increased operating standard may create a hardship, or lead to the creation of questionable thermal loads. Third, to the extent that thermal loads are fixed, an increase in the operating standard will reduce the capacity of the generating component and, therefore, the overall efficiency of the cogenerator.⁹⁷ Fourth, from an energy conservation standpoint, even relatively inefficient cogeneration is more efficient than simple production of electric power.⁹⁸ Fifth, higher efficiency standards reduce the operational flexibility of the facility and make dispatching more difficult.⁹⁹ Since most utilities want dispatchable QFs, this would greatly discourage cogeneration.

The Commission has several options regarding its operating and efficiency standards. The standards could be increased to levels that would assure substantial increases in the energy

heat value) of 8150 Btu/kWh for a conventional 220-megawatt combined-cycle unit operating at full load and using distillate fuel oil or gas fuel. That yields an efficiency (at lower heat value as used in the Commission's regulations) of 46.32 percent when the fuel is natural gas and 44.69 percent when the fuel is a light distillate oil.

⁹⁵ See Comments of Alabama Electric Cooperative, Inc. (recommended that the Commission act to discourage "PURPA machines"); National Rural Electric Cooperative Assoc. (NRECA) (supported proposal that current thermal efficiency standard for cogenerators be increased); Colorado-Ute Electric Assoc. (suggested that overall efficiency of a QF should at least meet or exceed the efficiency of a comparable electric utility and that the operating standard be increased to 25%).

⁹⁶ See Comments of Signal Energy Systems.

⁹⁷ See Comments of Cogen Technologies, Inc.

⁹⁸ See Comments of ANR Venture Management Co.

⁹⁹ See Testimony of Albert Smith, Chairman and President, PSE Inc. at Tr. 243-244, Commission's Conference on PURPA, Washington, DC, April 16, 1987.

⁸⁸ 18 CFR 292.205(a)(2)(B) (1987).

⁸⁹ 18 CFR 292.205(a)(2)(A) (1987). Operating and efficiency standards are not feasible for bottoming-cycle cogeneration facilities and, therefore, no standards for such facilities are in place except where supplementary firing is involved.

⁹⁰ "Project Independence" (1974) found that increased use of the country's abundant indigenous coal reserves could provide a long-term solution to the nation's apparent growing shortage of natural gas and ever-increasing reliance on imported oil.

⁹¹ A baseload unit is one that generates greater than 3,500 hours per year. U.S. Department of Energy certification of future coal capability is required for cogenerators using more than 100 million Btus/hour of natural gas or oil and selling more than 50 percent of their electrical output. Otherwise, no certification is required to use natural gas or oil.

⁹² Commission's Conference on PURPA, Docket No. RM87-12-000, 52 FR 2552, FERC Statutes and Regulations ¶ 35,011 (1987).

⁹³ See Comments of Utah Power and Light Co., Florida Power Corporation, Oklahoma Gas and Electric Co., Southwestern Electric Power Co., and Middle South Utilities, Inc.

⁹⁴ The Technical Assessment Guide, EPRI P-4463-SR, December, 1986, lists a heat rate (at higher

efficiency of individual cogeneration facilities. Alternatively, the Commission could eliminate the standards altogether, or leave the standards unchanged.

Increasing the existing standards would undoubtedly discourage some potential cogenerators that are in all other respects consistent with the Congressional intent for the PURPA program. Eliminating the standards would make cogenerators for all practical purposes indistinguishable from other powerplants.

The Commission proposes to leave the operating and efficiency standards unchanged as long as *bona fide* cogenerators enjoy the special privileges bestowed by PURPA.

The Commission believes that a simple means of identifying *bona fide* cogeneration facilities remains appropriate. The current minimum operating standard, that 5 percent of the facility's total energy output be in the form of useful thermal energy output, meets such a test. Elsewhere in this NOPR, the Commission is proposing more detailed economic tests which should discourage token uses of thermal output for QFs. Furthermore, with the encouragement of entrepreneurial investment in non-QF power projects as an alternative to cogeneration, there may be less incentive to employ "creative" use of thermal output. Maintenance of the operating standard will also assure some degree of energy efficiency and fuel conservation.

The Commission also believes that the efficiency standard should remain at its current level for cogenerators using oil and natural gas. Although this standard does not assure that cogeneration facilities be made as efficient as possible, it does require that cogeneration facilities be no less efficient than state-of-the-art combined-cycle generating plants. With the amendments to the FUA, utilities may now construct combined-cycle baseload plants. Cogenerators would be held to a standard no more and no less strict.

Finally, the Commission observes that where the purchasing utility's avoided costs are accurately set, the market will dictate the proper balance thermal and electric output.¹⁰⁰ Maintenance of both

standards at current levels would offer protection against wasteful use of fuel if avoided costs, as set through administrative methods, are determined inaccurately.

B. Efficiency Standard Calculations

1. Background

Under § 292.205(a)(2), the efficiency standard for new topping-cycle cogeneration facilities is applied to "any topping-cycle cogeneration facility for which any of the energy input is natural gas or oil".¹⁰¹ Both facilities that use oil or natural gas as the primary energy source and those using other primary energy sources in combination with some oil or gas must meet the Commission's efficiency standard.

2. Problem

Some cogeneration facilities are primarily fired by energy sources other than oil or natural gas and use only small amounts of these fuels, for purposes such as ignition, start-up, flame stabilization, and control. The application of the Commission's efficiency standard to these facilities has been a source of some confusion.

The Commission's efficiency standard was designed to assure that topping-cycle cogeneration facilities fired by oil or natural gas use these fuels more efficiently than any combination of facilities separately producing electricity and steam.¹⁰² As such, the efficiency standard is intended to be directed toward facilities primarily fired by these fuels and was not intended for topping-cycle cogeneration facilities not primarily fired by oil or gas. These facilities easily exceed the Commission's standard by wide margins.¹⁰³

3. Proposed Solution

The Commission believes that topping-cycle cogenerators using oil or natural gas in amounts less than or equal to 50 percent of the annual energy input should not be required to document compliance with the Commission's efficiency standard. The Commission proposes to exempt topping-cycle cogeneration facilities using only some natural gas or oil from providing computations as evidence that

they meet the Commission's efficiency standard. Thus, only topping-cycle cogeneration facilities that derive more than 50 percent of their annual energy input from oil or natural gas would be required to document that they meet the Commission's efficiency standard. The Commission believes this proposal will further streamline the review of certification applications.

C. Sequential Use of Energy

In adopting its regulations for qualifying status of cogeneration facilities, the Commission added the requirement of sequential use of energy to the statutory definition of a cogeneration facility.¹⁰⁴ In so doing, the Commission explained that sequential use means that: rejected heat from a power production or heating process is used in another power production or heating process. It is precisely this "cascading" use of energy in sequential processes that gives rise to the energy conserving characteristic of cogeneration.¹⁰⁵

There are two types of sequential uses of energy. In a "topping-cycle" cogeneration facility, the energy input to the facility is first used to produce power, and the reject heat from power production is then used to provide useful heat.¹⁰⁶ In a "bottoming-cycle" cogeneration facility, the energy input to the system is first applied to a useful heating process, and the residual heat emerging from the process is then used for power production.¹⁰⁷

In applying these criteria, the Commission may determine that only part of a cogeneration facility meets the sequential use requirement. Accordingly, it may certify the qualifying status of that portion of the facility that meets the sequential use

¹⁰⁴ Section 201 of PURPA added section 3(18)(A) of the FPA which defines a cogeneration facility as a facility which produces (i) electric energy, and (ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes. 16 U.S.C. 796(18)(A) (1982). The Commission's regulations define a cogeneration facility as "equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy." 18 CFR 292.202(c) (1987).

¹⁰⁵ Order No. 70, 45 F.R. 17959, 17960-61, FERC Statutes and Regulations, Regulations Preambles 1977-81 ¶ 30.134 at 30.934-35. See also EG&E, Inc., 16 FERC ¶ 61,060 at 61,104 (1981).

¹⁰⁶ 18 CFR 292.202(d) (1987). In a topping-cycle facility, not all of the working fluid (typically steam) which passes through the prime mover (typically a turbine) to produce electricity must be applied to a useful thermal output. The sequential use rule requires, for example, only that the portion of turbine steam flow used for a thermal purpose be previously used for generation. See Texas Industries, Inc., 29 FERC ¶ 61,051 at 61,111 (1984); Adolph Coors Co., 34 FERC ¶ 61,209 at 61,355 (1986).

¹⁰⁷ 18 CFR 292.202(e) (1987).

¹⁰⁰ The Commission has proposed, in a separate rulemaking (Docket No. RM88-5-000), to waive the efficiency standard for oil- and gas-fired cogeneration facilities that compete in a bidding program for capacity payments and are selected as winning bidders. This waiver would not apply to the operating standard under § 292.205(a). See Bidding NOPR at 32,030.

¹⁰¹ 18 CFR § 292.205(a)(2) (emphasis added). The efficiency standard applies only to facilities, the installation of which began on or after the date the rules were issued, March 13, 1980.

¹⁰² 45 FR, note 56 at 17967.

¹⁰³ The reason for this is that the standard compares the overall output of a facility only to the natural gas or oil input. Thus, facilities using small amounts of oil or natural gas for purposes of flame stabilization, start-up, or control easily exceed the Commission's standard.

requirements while denying certification to the nonsequential use portion of the same facility.¹⁰⁸ In some combined-cycle cogeneration configurations, applicants appear to have designed their projects so that a token amount of steam from the condensing steam turbine can be extracted to establish sequential use.

The Commission is proposing a revision to its current regulations in order to eliminate potential confusion about the sequential use requirement and to eliminate the incentive to propose token uses of steam which do not improve the cogeneration facility's efficiency. The Commission notes that, although the sequential use requirement is discussed in the preamble to Order No. 70,¹⁰⁹ the term is not explicitly defined in the regulations. However, the sequential use requirement is implied in our definitions of topping- and bottoming-cycle cogeneration facilities.¹¹⁰ The Commission is also concerned that the current use requirement, as it has been applied on a case-by-case basis, may have resulted in inconsistent application of the requirement and a bias toward certain technologies over others.

The Commission reaffirms the general definition that sequential use of energy means either that rejected heat from power production is used to provide useful thermal energy, or that rejected heat from a thermal process is used for power production, so that, in either case, energy flows from one activity to the other. However, we are proposing to modify the definition of a topping-cycle cogeneration facility to allow that only some of the reject heat from power production must be used for a useful purpose independent of power production—an industrial thermal process or a heating application, for example. The definition will then be consistent with Commission case practice.¹¹¹ In order for a topping-cycle cogeneration facility to qualify for the PURPA benefits, energy delivered to a useful thermal process or heating application must have first been routed through some portion of the power production process. Similarly, the Commission proposes to make a parallel change in the definition of bottoming-cycle facilities.

There are many possible arrangements of equipment that would

satisfy the rule outlined above. It is important to note that thermal energy would not have to be extracted from every turbine. The rule requires only that thermal energy be extracted somewhere along a chain of turbines linked by a sequential energy flow. A condensing turbine may be part of a qualifying cogeneration facility, provided that useful thermal energy is extracted from an "upstream" turbine. In this example, the upstream turbine provides steam both to a thermal process and to a lower pressure, downstream turbine.

By contrast, an example that would not meet our proposed definition of sequential use of energy is a situation where a condensing unit takes steam directly from fuel-fired boilers, uses it to generate power, then condenses it, with none of the steam being used for any thermal energy application.¹¹²

A combined-cycle facility would meet the proposed sequential use test in a number of ways. Useful thermal energy could be extracted in the form of steam from the steam turbine. Alternatively, the thermal energy could be taken directly from the heat recovery boiler, since this energy would already have passed through a power producing process in the gas turbine. Of course, a combined-cycle power plant without any heat recovery would not qualify as a cogeneration facility.

D. Useful Thermal Energy Output

Under section 201 of PURPA, a qualifying cogeneration facility must produce steam or forms of useful energy (thermal energy output) which are used for industrial, commercial, heating, or cooling purposes.¹¹³ The existence of a *bona fide* useful thermal energy output is what distinguishes a dual product cogenerating facility from a single product generating facility.

In order to be considered "useful," a thermal output must have an "independent business purpose" with some economic justification.¹¹⁴ The rationale for this test rests on the premise that opportunities for improved energy efficiency with cogeneration arise from the production of dual products, electricity and useful heat, from a single energy source. Therefore, the absence of a genuine purpose for a

heat product negates the potential to gain improved efficiency from cogeneration.

The Commission's application of the independent business purpose test has evolved along two areas of concern. One such area of concern is the determination that a cogeneration facility must have two *separate* products.¹¹⁵ The objective in such cases is to determine that the proposed "useful thermal product" is truly separate and not just one of the processing steps in the production of electricity. As the Commission stated in *Electrodyne*:¹¹⁶

[U]seful thermal energy output must truly be an output. Thermal applications such as power plant feedwater heating, deaerating and fuel preparation are internal to the power production cycle and are, therefore, not outputs * * * [T]he application must be used for a process in which thermal energy effects a chemical or physical change. The production of electricity or mechanical energy, a steam driven pump for instance, is not a thermal output.

The second area of concern has focused on the validity of the business purpose underlying the thermal application. Whereas industrial and commercial processes with established steam or heat requirements and standard thermal uses for heating and cooling buildings have been considered acceptable without any additional evidence of business purpose, new or unusual applications of thermal energy have had to be supported by evidence that the thermal output is to be used in an economically justified activity and is not contrived to satisfy the Commission's operating standard to obtain QF status.¹¹⁷

A variety of information could be used to substantiate the legitimate business purpose of a novel thermal use. The Commission has not restricted the nature of information that would constitute sufficient economic justification, but has suggested that cost/benefit studies might be used to provide the necessary evidence.¹¹⁸

The determination that a new technology or novel heat use constitutes an independent business purpose and is, therefore, consistent with a "useful thermal energy output" has been a

¹⁰⁸ See, e.g., *California Portland Cement Co.*, 20 FERC ¶ 61,217 (1982).

¹⁰⁹ See 45 F.R. 17960-62, FERC Statutes and Regulations, Regulations Preambles 1977-1981 ¶ 30,134 at 30,934-37.

¹¹⁰ 18 CFR 292.202(d) and (e).

¹¹¹ See *Texas Industries, Inc.*, 29 FERC ¶ 61,051 and *County of Olmsted, Minnesota*, 31 FERC ¶ 61,066.

¹¹² See *Adolph Coors Co.*, 34 FERC ¶ 61,209 at 61,355 (1986).

¹¹³ 16 U.S.C. 799(13)(A) (1982).

¹¹⁴ See *EG&E, Inc.*, 16 FERC ¶ 61,080 at 61,104 (1981) ("the use of thermal energy must be completely independent of the power production process"); *John W. Savage*, 28 FERC ¶ 61,233 (1984) (applicant provided persuasive evidence of the independent economic attractiveness of his aquaculture venture).

¹¹⁵ 16 FERC at 61,104.

¹¹⁶ *Electrodyne Research Corp.*, 32 FERC ¶ 61,102 at 61,279 (1986). (Footnote omitted).

¹¹⁷ See *EG&E, Inc.*, 16 FERC at 61,104; *John W. Savage*, 28 FERC ¶ 61,273 (1984); *James A. Drake and Miller's Plant Farm—Foliage and Chrysanthemum Division of Dustin, Oklahoma, Inc.*, 28 FERC ¶ 61,241 (1984); *Electrodyne*, 32 FERC at 61,279; *Fayette Manufacturing Corp.*, 36 FERC ¶ 61,230 (1986).

¹¹⁸ See *Electrodyne Research Corp.*, 32 FERC ¶ 61,102 (1986).

difficult and time consuming task for both the Commission and QF certification applicants. Applicants for QF status have not known with certainty what information must be supplied in order to establish the economic justification of a thermal output. This uncertainty has increased the difficulty of planning and developing cogeneration projects and, in the worst cases, may encourage some applicants to try to "game the system" by producing elaborate business projections for nonfunctional undertakings. Appraising the economic viability of different types of new undertakings, such as greenhouses, fish farms and industrial gas plants, is very time consuming, and involves decision making over which reasonable people can differ.

1. Proposed Solution

Determining the independent business purpose of the thermal output does not assure that the primary objective of the Commission's cogeneration rules is actually met. The existence, or lack, of an independent business purpose does not assure that there is a net gain in energy efficiency. In place of the independent business purpose test for new or non-standard thermal uses in qualifying cogeneration facilities, the Commission proposes to require that applicants demonstrate that the revenues received from the sale of heat or steam are equal to or greater than the cost of an equivalent quantity of the QF's fuel input. This test for novel thermal uses would require that the applicant sell heat or steam at a price that would at least compensate for the cost of the fuel consumed to provide it. The revenues would not include income from the sale of electricity or any other product. Therefore, no qualifying cogeneration facility would "give away" heat to continue a useful thermal purpose only to meet the standards to qualify for status.

Where the thermal user is not affiliated with the facility, evidence of an arms-length transaction has been taken to indicate economic justification for the thermal use. In cases where the cogenerator and the thermal user are affiliated, more elaborate documentation of the economic justification has been required. A contract between a QF and a nonaffiliated heat or steam customer that specified a price per Btu for energy delivered to the user that is equal to or greater than the Btu equivalent price of the cogenerator's fuel actually used

would satisfy this test.¹¹⁹ Transactions between affiliated entities would be subject to the same standard, but additional documentation on the derivation of the price attributed to the steam or heat transfer may be required to substantiate that prices between affiliates are fair representations of market value. The Commission solicits comments on what kind of documentation would be necessary.

The Commission invites comment on how it might most easily substantiate transfer prices among affiliates. By setting a standard based on the price paid for thermal energy rather than the business purpose, the Commission intends to streamline the requirements for obtaining QF status and to discourage token thermal uses which do not improve the efficiency of energy utilization.

E. Bottoming-Cycle

1. Background

Bottoming-cycle cogeneration facilities are cogeneration facilities which use a single energy source first to produce useful thermal energy and then to recover heat left over from the first process application and use it to produce electric power. In other words, the sequential process in bottoming-cycles is first thermal applications and second electric generation.

Bottoming-cycle cogeneration plants are far less common than topping-cycle facilities. Of the approximately 3,998 QF filings received by the Commission, only 9 are listed as bottoming-cycle cogeneration facilities. Nevertheless, the technology is well established and the Commission's regulations provide standards for bottoming-cycle QFs.

2. Problem

Technically, opportunities to install bottoming-cycle cogeneration facilities are far fewer than for topping-cycles because most thermal applications use energy at relatively low temperatures—compared to either the combustion temperature of the fuel or the temperature at which the turbine generator operates. Many bottoming-cycle designs require supplemental firing to increase the energy level of the reject heat used for electric generation. This supplemental firing reduces the natural energy efficiency of cogeneration.

Under the current rules, bottoming-cycle designs with unlimited supplemental firing could easily lead to

program abuses. For example, a modest amount of process heat at a low temperature and pressure could be fed into a waste heat recovery boiler with large amounts of supplemental firing. At the extreme, these configurations could become power plants embodying little of the improved energy efficiency the program is intended to capture.

Some proposed bottoming-cycle cogeneration facilities have received QF certification as small power production facilities using waste heat as the primary energy source.¹²⁰ But if these facilities are treated as small power production applications, they are subject to the size limits. Furthermore, the classification of waste under the small power production category is already sufficiently difficult without trying to expand the definition to cover some types of cogeneration designs as well as energy sources.

3. Proposed Solution

The potential for abuse of bottoming-cycle QF status could be substantially reduced by imposing an operating standard on such facilities. Unfortunately, it would be very difficult to establish the necessary engineering standards to determine overall contributions to thermal and power uses for bottoming-cycle configurations. The Commission solicits comments on a test for bottoming-cycle cogeneration facilities with supplementary firing.

On an annual basis beginning with the in service date, the proposed supplementary firing standard would require that all energy inputs subsequent to thermal use not exceed one half the energy input into the thermal application. Under this limitation, energy applied to supplementary firing would be constrained and could never become the major energy input to the entire system. Of course, it would be possible to use wasteful amounts of energy in the first thermal stage application in order to reduce supplementary fuel consumption. The Commission expects that this strategy would be discouraged by the cost of the additional fuel, and the likely impact on the thermal process of greatly increasing the flow of fuel and combustion air, and by properly set avoided cost rates for utility purchases of electricity.

Bottoming-cycle applications that do not use supplementary firing would not be affected by this change.

¹¹⁹ The Commission would consider requests for confidential treatment of such information pursuant to § 388.112 of the regulations. 18 CFR 388.112 (1987).

¹²⁰ See, e.g., Energy Technology Engineering Center, Rockwell International Corp., 31 FERC ¶ 62,357 (1985).

VI. Technical Standards For Small Power Production Facilities

A. Waste

Under PURPA, a qualifying small power production facility must produce electric energy "solely by the use, as a primary energy source, a biomass, waste, renewable resources, geothermal resources, or any combination thereof * * *".¹²¹ The term "waste" was not defined in the statute. The Conference Report merely stated that "the term 'waste' in the definition of 'small power production facility' includes wood and liquid or solid waste."¹²² In its final rule implementing PURPA, the Commission defined waste as "by-product materials other than biomass."¹²³

The Commission has found it difficult to determine what constitutes a by-product.¹²⁴ In addition to determining what constitutes a "by-product", the Commission has examined whether the energy source had any commercial value. In *Stieren Farms*,¹²⁵ the Commission determined that gas from an abandoned coal mine was waste and noted that "generally waste is an economic concept referring to materials whose cost of salvage or marketing exceed the cost of disposal." Later, in *Kenvil Energy Corporation*,¹²⁶ the Commission found that to be a "waste", the energy source must be both a by-product and currently have little or no commercial value. In *Pynoyl Corporation*, (Pynoyl)¹²⁷ the

Commission found that low quality natural gas produced from a natural gas well which had little or no commercial value could be considered waste. The Commission held that the gas was an undesired product and was a by-product of the distillate recovery process. However, the Commission also reasoned that low quality gas is an undesired result of the search for high quality gas. The Commission stated:

Consistent with the intent of PURPA, we believe that natural gas which is not commercially marketable because of its poor quality may be considered to be a by-product. Whenever a drilling operation is undertaken, the desired result is that a marketable product will be found. If the gas which is actually found has no commercial value because of its poor quality, the gas is an undesired product.¹²⁸

The Commission has found that applying the by-product test is cumbersome and does not adequately address the issue of what constitutes "waste". The Commission believes that waste can be determined by examining only the economic value of the energy source rather than also determining whether it is a by-product of some manufacturing, production or industrial process. The Commission further believes that a strict adherence to the by-product test might exclude some energy sources that, although not technically by-products, are generally considered to be waste because they have no value. Therefore, the Commission proposes to redefine waste as "an energy source other than biomass that has essentially no commercial value at the time and place in which it is produced."

This proposed definition would account for the time when the energy source is produced as well as the area in which it is produced. An energy source may have some economic value but because of market conditions at the time it may have no commercial value. For example, an energy source produced in one area of the country may not be marketable in the area in which it is produced but may be marketable in another area. However, transportation costs may make the sale uneconomic. The Commission is requesting comments as to how to account for these

geographic differences in determining whether an energy source is waste.

The Commission is also proposing to adopt a list of specific energy sources materials that it considers to be waste. The list is intended to be illustrative, and not inclusive. In addition to these specific energy sources, identified below, the Commission recognizes that there are other potential sources of "waste" energy that meet the definitions of waste. Some of these potential energy sources have already been included in various applications for certification as for example, oil-impregnated diatomaceous shale, residual heat, and heat from exothermic reactions. For other potential "waste" energy sources, there is no Commission precedent. These include char and tar (coal by-products), crankcase oil, oil shale retort residues and oil storage tank bottoms (oil by-products). The Commission invites comment on whether additional energy sources should be added to the list of specific energy sources that meet the definition of "waste".

The Commission proposes to treat the following specified energy sources as "waste":

- (1) Anthracite culm produced prior to July 23, 1985.¹²⁹
- (2) Anthracite coal refuse that has a heating value no greater than 6,000 Btu per pound and that has 45 percent or more ash.¹³⁰
- (3) Bituminous coal refuse that has a heat content no greater than 9,500 Btu per pound and that has 25 percent or more ash.¹³¹

¹²⁹ The Commission determined that anthracite culm produced prior to July 23, 1985, is waste in *Electrodyne Research Corp.*, 32 FERC ¶61,102 (1985).

¹³⁰ This includes anthracite culm produced after July 23, 1985, anthracite silt and other anthracite refuse from mining operations. An analysis of data on the quality of anthracite and anthracite refuse (including culm and silt) that is being purchased by electric utilities for boiler fuel shows that anthracite refuse that has a heating value no greater than 6,000 Btu per pound and an ash content of at least 45 percent includes less than 1 percent of anthracite considered to be of commercial grade during the five year period 1981-1985.

¹³¹ The category includes:

- (1) Cleaning plant tailings from coal cleaning operations;
- (2) Gob (loose coal refuse) left behind on the floor of mined areas;
- (3) Bone or bone coal (carbonaceous shale that has a high content of noncombustible materials); and
- (4) Other bituminous coal refuse, such as "pond coal," "filter cake" and "screen refuse." Pond coal is the very fine coal that is carried away from the cleaning plant with the wash water and is allowed to settle in ponds. "Filter cake" is the solid or semi-solid material separated from a liquid and remaining on a filter after pressure or vacuum filtration. "Screen refuse" is a coal-bearing refuse generated in the crushing and screening of coal.

Continued

¹²¹ 16 U.S.C. 796(17)(A)(i) (1982).

¹²² H.R. Rep. No. 1750, 95 Cong., 2nd Sess. 89, reprinted in 1978 U.S. Code Cong. and Ad. News, 7797 at 7823 and in FERC Stats. & Regs. ¶ 515 at 5079.

¹²³ 18 CFR 292.202(b). The Commission proposed the following definition of "waste" in its notice of Proposed Rulemaking (Docket No. RM79-54): The term "waste" covers municipal, agricultural, and industrial wastes and includes any byproduct materials of any operation for which market value is less than disposal cost. Waste may be solid, liquid or gaseous. Municipal sewage sludge would be a qualifying fuel under this definition. Manure and cornstalks are examples of qualifying agricultural wastes. Wood derived waste and debris from sawmill, lumbering, or pulp mill operations would qualify as biologically derived industrial wastes. This proposed definition of waste did not receive favorable public response. All of the examples of waste were subsumed within the definition of biomass, thus leaving no concrete example of what type of material would constitute waste. Moreover, the commenters pointed out extensive problems in applying the economic test, "market value is less than disposal cost." Calculation of both market value and disposal cost is difficult and both are likely to fluctuate widely.

¹²⁴ See, e.g., *Kenvil Energy Corporation*, 23 FERC 61,139 (1983), and *Tulsa Energy Corporation*, 19 FERC ¶ 61,331 (1982).

¹²⁵ 17 FERC ¶ 61,260, (1980) at 61,509.

¹²⁶ 23 FERC ¶ 61,139 (1983).

¹²⁷ 38 FERC ¶ 61,136 (1987).

¹²⁸ In *Pynoyl*, the Commission recognized that its decision could result in an increase in applications proposing to use low quality natural gas as a primary energy source in small power production facilities. In anticipation of this increase, the Commission, in Order No. 471, established generic standards for determining whether natural gas is commercially unmarketable. 38 FERC at 61,361. Interpretation of "Waste" Natural Gas, III FERC Stats. & Regs., ¶ 30,744, 52 FR 19,308 (May 22, 1987). See, 18 CFR 2.400 (1987).

(4) Top or bottom subbituminous coal that has a heat content of 8,000 Btu per pound or less and a sulfur content of 1.5 percent or more and which has been determined to be waste by the Bureau of Land Management.¹³²

(5) Lignite produced in association with the production of montan wax, and lignite that becomes exposed as a result of such a mining operation.¹³³

(6) Gaseous fuels, except (a) synthesis gas from coal, and (b) natural gas (including natural gas liquids and liquefiables) from gas and oil wells unless the natural gas meets the requirements of § 2.400 of the Commission's regulations.¹³⁴

Practically no bituminous coal with a heat content of 9,500 Btu per pound or less and 25 percent or more ash was purchased by electric utilities during the five-year period 1981-1985.

The heat content of coal decreases as the moisture and ash content of the coal increases. When a high ash and a high moisture content combine in the same coal, the result is a low Btu refuse. However, the moisture content can frequently be reduced by a drying operation, thus increasing the heat content of the coal and rendering it into a marketable product. Consequently, a bituminous coal, regardless of its type and origin, must be both low in Btu content and high in ash content in order to be "waste."

¹³² The Commission determined that top or bottom subbituminous coal was "waste" in Big Horn Energy Partners, 36 FERC ¶ 61,265 (1987). In some areas of the Powder River Coal Basin (covering northeastern Wyoming and southeastern Montana), the top and bottom layers of subbituminous coal seams are inferior in quality to the main, central portions of the seams. Where these quality differences occur, a thin layer of coal at the top may be removed and mixed with the spoil. After the central portion of the seam is mined, a thin layer of coal at the bottom of the seam may be left unmined. In most strip mining operations, the bulk of the "top" and "bottom" coal is blended in with coal from the main central portions of the coal seams and is marketed as single commercial product. However, if the "top" or "bottom" coal is so inferior that it cannot be blended and still meet buyers' quality requirements, such coal is waste. Since most of the subbituminous coal in the Powder River Coal Basin is from Federal lands, the determination of what "top" and "bottom" coal is waste should be made by the Bureau of Land Management.

¹³³ Lignite is a low rank coal in which the alteration of vegetal material has proceeded farther than in peat but not as far as in subbituminous coal. In a few areas of the country, lignite contains montan wax that is recovered for sale as feedstock for the manufacture of candies, phonograph records and polishes. In American Lignite Products Company, 25 FERC ¶ 61,054 (1983), the Commission certificated a small power production facility that proposed to use lignite residue resulting from the production of montan wax.

¹³⁴ This category includes refinery gases, coke oven gas, blast furnace gas, carbon black gas, and coal mine gas. It also includes "waste" natural gas as defined in Order No. 471, Interpretation of "Waste" Natural Gas, 33 FERC Stats. & Regs. ¶ 30,744, 52 FR 19,308 (May 22, 1987). See, 18 CFR 2.400 (1987).

Synthesis gas from coal is not included because synthesis gas plants can be designed to produce a low Btu gas (less than 300 Btu per Mcf) and a residual char that has little or no market value. If neither of the products can be sold commercially,

(7) Petroleum coke that cannot be commercially marketed.¹³⁵

(8) Rubber tires that cannot be commercially marketed.¹³⁶

(9) Plastics that cannot be commercially marketed.¹³⁷

(10) Materials that a government agency has certified for disposal by combustion.¹³⁸

both could qualify as "waste." This would simply be a roundabout way of using good quality coal to produce "waste."

Refinery gases are a by-product of petroleum refining. Refinery gases have a high Btu content (1000+ Btu per cubic foot) but may be unsuitable for pipeline use because of impurities. These gases are usually used in the refinery to generate process heat. Excess gases are sometimes sold as power plant fuel.

Coke oven gas is formed in the production of coke. In producing coke, some of the coal used is converted to gases or vapors. After valuable products are recovered from the gases, the noncondensable portion is called coke oven gas. Coke oven gas has a heating value of 575 to 590 Btu per cubic foot and burns readily because of its high free-hydrogen content.

Blast furnace gas is used in mills for heating furnaces, for gas engines and for steam generation. Blast furnace gas is variable in quality but generally has a high carbon monoxide content and low heating value (about 85 Btu per cubic foot).

Carbon black is of nearly pure elementary carbon composed of small spherical particles that are usually produced from natural gas and other hydrocarbons by partial combustion or thermal decomposition under carefully controlled conditions. The flue gases from carbon black manufacture have a residual heat value of 60 Btu per cubic foot and can be burned to produce steam.

Coal mine gas comes from abandoned or active coal mines. When an abandoned underground coal mine is sealed off, gases containing elevated concentrations of methane may accumulate in the mine. The gas mixture may be tapped and burned for heating nearby homes or for the production of steam. Active underground coal mines are ventilated to remove methane and other noxious gases. Methane gas may be of pipeline quality but is not under enough pressure to be suitable for long distance transport.

The mined out areas in underground coal mines employing the longwall mining method are filled with gob (a mixture of unmined coal and roof rock) that is usually a source of methane gas emissions. Gob gas is a mixture of mine air and methane and its Btu content varies. Vertical bore holes that are used to drain methane gas from the coal seam may then be used to drain gob gas. Both types of gas have been used for space heating and for steam production.

¹³⁵ Petroleum coke ordinarily has less than 1 percent ash, has a high fixed carbon content (about 90 percent), is very low in volatile matter (6 percent to 11 percent) and usually contains more than 4.5 percent sulfur. For these reasons, it is not a very desirable boiler fuel.

¹³⁶ Tires are reported to have an average heating value of 14,500 Btu per pound.

¹³⁷ Plastics refer to synthetic or natural resins that can be molded by heat or pressure into finished products.

¹³⁸ Various industrial processes generate hazardous waste by-products and contaminated materials frequently. These by-products and materials originate from the manufacture of paints, textiles, paper and ink or processes associated with printing, metal working or those using nonchloride hydrocarbons. One method of disposing of these by-products and materials is by combustion.

The Commission's proposed definition of "waste" would be applied prospectively only. Furthermore, once an application for qualifying status for a particular project is granted, certification for that project may not later be revoked on the ground that the "waste" material is later found to have commercial value. This requirement is necessary to protect the small power production facility against the loss of or inability to obtain financing.

B. Permissible "Minor Uses" of Fossil Fuels in Small Power Production Facilities

Under the FPA as amended by PURPA, a small power production facility may use "minimum amounts" of fossil fuels for purposes of ignition, startup, testing, flame stabilization and control uses and also to alleviate or prevent unanticipated equipment outages and emergencies directly affecting public health, safety or welfare.¹³⁹ In implementing these statutory requirements, the Commission adopted regulations allowing a small power production facility to use, in the aggregate, up to 25 percent fossil fuels (natural gas, oil, or coal) for the listed statutory purposes.¹⁴⁰ The Commission subsequently authorized "minor uses" of fossil fuels in addition to those specified in the statute, provided that the use in question enhances the efficiency of the facility's essential fixed assets.¹⁴¹

The current 25 percent test has resulted in some difficulty in obtaining adequate information for processing certification applications where applicants enumerate uses other than those permitted in the statute but do not explain how the essential fixed assets are being used more efficiently by such uses. Additionally, various uses under the essentially fixed assets test have been problematic.¹⁴²

Defining the material as waste simply recognizes the obvious fact that it has no commercial value. The definition in no way affects the requirement that the combustion of the material and its use as fuel could be undertaken only in compliance with all applicable Federal, state or municipal environmental control laws or regulations and the approval of the appropriate governmental bodies.

¹³⁹ 16 U.S.C. 796(17)(B) (1982).

¹⁴⁰ Order No. 70, 45 FR 17959, 17968, FERC Statutes and Regulations, Regulations Preambles 1977-1981 ¶ 30,134 at 30,945; amended, 45 FR 33958, 33962, FERC Statutes and Regulations, Regulations Preambles 1977-1981 ¶ 30,160 at 31,113 (1980).

¹⁴¹ See LUZ Solar Partners Ltd., 30 FERC ¶ 61,122 (1985); Power Developers, Inc., 32 FERC ¶ 61,101 (1985), reh. denied, 34 FERC ¶ 61,138 (1986); Northeastern Power Co., 34 FERC ¶ 61,197 (1986); LUZ Solar Partners II Ltd., 34 FERC ¶ 61,383 (1986).

¹⁴² See, e.g., Hydro Corp. of Pennsylvania, 43 FERC ¶ 61,276 (1986) where a diesel engine was proposed for a hydroelectric project.

In the Commission's recent conference on PURPA, Southern California Edison Company argued that the limit on supplementary use of fossil fuels should be reduced from 25 percent to 10 percent.¹⁴³ Other commenters not only opposed more stringent fuel use regulations, but favored raising the limit to 50 percent, citing the repeal of portions of the Powerplant and Industrial Fuel Use Act of 1978 (Fuel Use Act) as a reflection of Congressional intent to ease the restrictions on the use of fossil fuels. They also claimed that increasing the allowable use of fossil fuels would have a positive effect on the dispatchability and load-following capabilities of technologies relying on

¹⁴³ See Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Southern California Edison Company at 7.

intermittent resources, i.e., solar energy.¹⁴⁴

Based on the Commission's experience with QF applications since Fiscal Year 1985, the Commission believes that it may be appropriate to reestablish the fossil fuel use percentage at a level such that any use below such a level would be presumed to meet the statutory uses and other minor uses permitted by the regulations. This

¹⁴⁴ Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by LUZ at 2-5; Hawaiian Sugar Planters Association at 4; Solar Stirling Industries, Inc. at 3; Renewable Energy Institute at 9. The Fuel Use Act was intended, in pertinent part, to prohibit or, as appropriate, minimize the use of natural gas and petroleum for the benefit of present and future generations, while encouraging greater use of coal and other alternative fuels as primary energy sources. 42 U.S.C. 8301 (1982).

proposal would allow the Commission to avoid time-consuming inquiries into the specific uses of fossil fuels in small power production facilities. The administratively burdensome "essential fixed assets" test would be eliminated in favor of a simple percentage rule.

For example, a limit of 15 percent fossil fuel use would encompass virtually all of the small power producer applications reviewed by the Commission. The basis for this percentage is the information contained in prior applications where specific information was provided on amounts of fossil fuel to be used for the specified statutory purposes. The following two tables provide such information for applications involving "waste" burning QFs and for biomass QFs.

WASTE.—PERCENTAGE OF FOSSIL FUEL USE

	(0-5)	(6-10)	(11-15)	(16-20)	(20-25)	Total ¹⁴⁵	Unspecified	Total ^{145,146}
QFs	20	0	1	0	0	21	71	91
Percent	95		5			100		

¹⁴⁵ Total filings reviewed. A few filings processed since FY 1985 were unavailable in the files.

BIOMASS.—PERCENTAGE OF FOSSIL FUEL USE

	(0-5)	(6-10)	(11-15)	(16-20)	(20-25)	Total	Unspecified	Total ¹⁴⁶
QFs	105	17	¹⁴⁷ 8	¹⁴⁸ 2	0	132	158	290
Percent	79.5	13	6	1.5		100		

¹⁴⁶ Total filings reviewed. A few filings processed since FY 1985 were unavailable in the files.

¹⁴⁷ Seven of the eight applications propose to use up to 15 percent natural gas for ignition, start-up, testing, and flame stabilization. Staff experience shows such uses are generally within 5 percent of the total. One application proposes that fossil fuel usage will not exceed 13.7 percent. It is not clear how such exact figure was calculated since the purposes of the fossil fuel usage are stated as ignition and such use generally falls in the (0-5) percent range.

¹⁴⁸ One of the two filings was a notice which proposed to use 20 percent natural gas in conjunction with a combustion turbine in a wood-fired small power production facility. As an application this presumably would not be permitted under *Power Developers*. The other filing proposes to use natural gas for "emergency uses" and it is not clear from the application as to the exact nature of such "emergency uses." The statute requires that such use be allowed only when public health and safety is involved.

Under this approach, the Commission would not conduct inquiries into the nature of proposed fossil fuel uses so long as such uses fell within the percentage limitation. It would also be unnecessary to determine whether proposed uses of fossil fuels would enhance the efficiency of facilities' essential fixed assets. Whatever percentage limitation is established would be considered sufficiently minor as to meet the statutory intent of a minor use without further inquiry. The Commission invites comments as to what percentage would be appropriate as the upper limit for fossil fuel use.

The Commission occasionally receives requests to certify small power producers that purchase a portion of the energy input to the facility in the form of

electricity ¹⁴⁹ or steam ¹⁵⁰ instead of direct use of fossil fuels such as oil, gas and coal. Although the regulations speak to the use of fossil fuels for minor uses, such indirect uses of fossil fuels are also considered as input to the facility in determining the proportions of energy supplied from waste, renewable, geothermal or hydroenergy sources.

The Commission, however, recognizes that under certain circumstances individual waivers of the percentage limitation may be appropriate. The Commission solicits comments on whether such waiver requests should be entertained. If waiver requests are allowed, the Commission also solicits comments on the criteria to be used to determine whether to grant these requests.

¹⁴⁹ McKee Products, Inc., 43 FERC ¶ 61,534 (1988).

¹⁵⁰ Lafjet Energy Co., 43 FERC ¶ 61,288 (1988).

Most recently, Representatives Philip Sharp and Carlos Moorhead, Chairman and Ranking Minority Member of the House Subcommittee on Energy and Power, respectively, brought to the Commission's attention the possibility that setting the maximum allowable use of non-renewable fossil fuel at 15 percent, rather than 25 percent, may adversely affect the promising technological breakthroughs in solar technology that motivated Congress to increase the maximum size of solar facilities that can be exempted from federal and state law under section 210(e) of PURPA from 30 to 80 megawatts. This is not the intent of the Commission, and the Commission solicits comment on this possibility. The Commission also requests comment on whether this concern would be adequately accommodated and the development of solar technology further

encouraged through the possibility of waivers of a percentage limitation. The Commission is also concerned that any change in the allowed amount of fossil fuel might adversely impact small power production facilities in the planning stage. Commentary is requested on the need for a transition period if changes are adopted.

C. Power Production Capacity

1. Background

The electrical capacity of a small power production facility is of crucial importance under the PURPA regulatory scheme. By statutory definition, small power production facilities must be no larger than 80 megawatts. Moreover, certain of the regulatory exemptions generally afforded to QFs are not extended to small power production facilities larger than 30 megawatts. Facilities powered by "waste," wind and hydropower are subject to both the FPA and PUHCA if their capacity exceeds 30 megawatts. Facilities fired with biomass would be subject to the FPA but exempt from PUHCA. Geothermal facilities and solar facilities (for a limited period of two years) are exempt from the regulatory provisions of both statutes, up to the maximum allowable size of 80 megawatts.

Many types of projects exhibit economies of scale in size ranges up to a few hundred megawatts. Such projects can produce electricity more cheaply if sized larger. But if sized too large, a facility may be exposed to regulation as a utility or may fall outside the definition of a small power production facility. A clear tension exists between the economic motivation of project developers and the statutory framework. For this reason, the Commission has repeatedly been confronted with questions of how to measure the electrical capacity of a small power production facility.

2. Problem

Small power production facilities employ a wide range of energy sources and technologies. This variation greatly complicates the task of determining a particular facility's electrical capacity. There are two reasons for this. First, the on-site station use of electricity can vary enormously.

Station use is the use of power in the power plant itself. For example, electricity is typically used to operate boiler feedwater pumps, and induced and forced draft fans, and for excitation of the generator. All of these station uses are consumed in the process of power production. Only the net output (gross output less station use) of a

facility is available to consumers of electricity, and the Commission has concluded in *Power Developers, Inc.*,¹⁵¹ that utilities are only obligated to purchase a QF's net output.

Station use of power depends on the production process employed. Hydroelectric facilities require very little station use of power. Geothermal facilities may require a large amount, since geothermal fluids must be pumped through the facility and reinjected into the ground. Power production from municipal solid waste may also require a large input of station use for processing the garbage. The station use problem makes reliance on the generator's nameplate rating an unreliable guide to the facility's actual production capability.

Station use is not the only complicating factor. The output of a power plant can be limited by any of a number of elements in the facility. In a Rankine cycle steam plant, the limited component could be the boiler, the turbo-generator, or the condenser. For large utility power plants, the individual components are engineered to operate harmoniously. But the components of a small power production facility are typically not custom designed and produced. These projects often use a variety of "off the shelf" components. Discussions with small power producers have indicated that standard turbine sizes are sometimes ordered that are oversized relative to the available energy resource. Again, the generator's nameplate rating may be a poor guide to the facility's real capability.

3. Proposed Solution

The Commission is proposing to codify its decision in *Occidental Geothermal Inc.*,¹⁵² in which we explained:

The Commission will consider the "power production capacity" of a facility to be the maximum net output of the facility which can be safely and reliably achieved under the most favorable operating conditions likely to occur over a period of several years. The net output of the facility is its send out after subtraction of the power used to operate auxiliary equipment in the facility necessary for power generation (such as pumps, blowers fuel preparation machinery, and exciters) and for other essential electricity uses in the facility from the gross generator output.

We are proposing to add a new § 292.202(p) that will reflect the concept of net capacity outlined in *Occidental Geothermal*. The Commission

recognizes that this definition does not eliminate the need for some measure of judgment in assessing the capacity of a small power production facility. We have tentatively concluded that the exercise of reasonable judgment is necessary for determining a facility's capacity. Any other approach, such as using nameplate capacity, appears to overlook the large variation in station use of power among small power production technologies. The Commission believes that its proposed definition will help QF certification applicants by sparing them the need to research the record of case decisions since 1981. Comments are invited on the merits of the proposed definition.

In addition to the question of *how* a QF's capacity is to be measured, the Commission must also decide *where* the measurement is to be made. Small power production facilities may comprise interconnection equipment, transformers, and radial transmission lines as well as the generator. Since electrical losses occur in all such equipment, the capacity of a facility will vary if measured at different points in the facility.

The capacity of a powerplant has traditionally been measured at the busbar. However, in *Malacha Power Project, Inc. (Malacha)*,¹⁵³ the Commission ruled that:

"the electric power production capacity of the facility is the capacity that the electric power production equipment delivers to the point of interconnection with the purchasing electric utility's transmission system."¹⁵⁴

The logic of the *Malacha* order was that capacity should be measured at the "outer envelope" of the facility. Since switchyards and radial transmission lines were found to be part of the facility,¹⁵⁵ the facility's capacity should be measured at the end of such switchyards and lines.

Apart from appearing consistent with the finding that a QF can include certain interconnection and transmission facilities, the *Malacha* approach provides one other benefit to small power producers. Larger generation facilities can be constructed than if capacity were measured at the busbar. In effect, certain transmission and

¹⁵¹ 41 FERC ¶ 61,350 (1987).

¹⁵² *Id.* at 61,946.

¹⁵³ See *Clarion Power Co. (Clarion)*, 39 FERC ¶ 61,317 (1987); *Sycamore Cogeneration Co. (Sycamore)*, 40 FERC ¶ 61,237 (1987) where the Commission determined that a QF facility included transmission lines as long as they are used for transmitting the QF's power to the purchasing utility and transmitting backup, supplemental and maintenance power to the QF.

¹⁵¹ 32 FERC ¶ 61,101 (1985), *reh. denied*, 34 FERC ¶ 61,136 (1986).

¹⁵² 17 FERC ¶ 61,231 (1981).

transformer losses are counted as internal losses in the facility.

The *Malacha* approach also has certain apparent drawbacks. The need to collect data on switchyard and transmission losses is one obvious liability. The required data may be complex. Losses will vary (in a nonlinear manner) due to the influence of such factors as the weather, the load imposed on the equipment and the power factor. The cost of collecting and analyzing such data would be imposed on all petitioners for QF certification, through the filing fee. The additional factors that affect transmission and switchyard losses may also make the capacity of individual QFs more uncertain, and subject to challenge if the factors change.

Moreover, the *Malacha* approach is inconsistent with the approach is inconsistent with the approach used to determine the capacity of utilities' generation resources. If the capacity of utility powerplants were evaluated at the busbar and QFs were evaluated after transformation and transmission, the QFs may be underpaid for their capacity. This is likely to occur because the utilities' power must also be stepped up to transmission voltage and carried over transmission lines. These losses must be treated consistently in order for QFs to be paid a correct measure of avoided cost. The Commission has recognized this need by including line losses as a factor which may affect avoided cost.¹⁵⁶

On balance, the Commission believes that its statutory mandate to encourage QFs would best be met by measuring a QF's capacity at the busbar. The alternative approach of measuring capacity at the point of interconnection appears to raise problems that far outweigh the few benefits. The Commission wishes to emphasize that any rule which may be adopted would not affect the qualifying status of any facility already certified.

VII. Environmental Finding

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.¹⁵⁷ The Commission has categorically excluded certain actions from this requirement as not having a significant

effect on the human environment.¹⁵⁸ No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.¹⁵⁹

Under this NOPR the Commission proposes to clarify its regulations on the criteria and procedures under which cogeneration and small power production facilities can obtain qualifying status for PURPA benefits. The proposed application form is a procedural requirement specifying certain information to be included in an application for certification. The proposed rule does not substantially change existing Commission regulations with respect to the criteria and procedures by which qualifying facilities can obtain PURPA benefits.

Section 201 of PURPA includes "waste" as an allowable primary energy source for qualifying small power production facilities. To the extent the Commission is proposing a revised definition of "waste" and providing an illustrative list of waste energy sources, this action simplifies current Commission practice but does not substantially change the effect of the underlying legislation.

The Commission is also proposing to revise the limit on the amount of fossil fuel that can be used in a small power production facility from 25 percent of the facility's energy input to 15 percent. This 15 percent limit, however, would have encompassed virtually all of the small power production applications received by the Commission since the beginning of the PURPA program. Therefore, a prospective change in this standard should have no significant environmental effect.

Accordingly, the Commission has determined that the proposed rule, if adopted, would not constitute a major Federal action significantly affecting the quality of the human environment.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider whether the rule, if promulgated, will have a "significant economic impact on a substantial number of small entities." An agency is not required to make an RFA analysis, however, if it certifies that the rule will not have such an impact.¹⁶⁰

The proposed rule would provide a number of benefits to small business entities. The proposed rule would improve the usefulness of the self-qualifying approach for small power production and cogeneration facilities seeking to qualify for PURPA benefits (qualifying facilities of QFs). Small entities would benefit by avoiding the time and expense of requesting Commission certification. In the event that a small entity desires Commission review of a proposed QF (either by certification or by declaratory order), the proposed rule would reduce administrative expense by clearly spelling out the information that needs to be filed. For facilities that have already been certified as QFs, the proposed rule under § 292.207(d)(2) would provide a quick and relatively inexpensive means of ascertaining the impact of changes to the QF. The proposed rule would provide workable alternatives to certification and should act to reduce the cost of certification.

For these reasons, the Commission believes that the streamlined regulatory procedures applicable to QFs will have a beneficial impact on these entities. Since the impact on these small entities affected by this rule is expected to be beneficial, the Commission does not believe the economic impact will be "significant" within the meaning of the RFA. The Commission certifies, therefore, that this rule, if promulgated, will not have a significant economic effect on a substantial number of small entities.

IX. Paperwork Reduction Act

The Paperwork Reduction Act¹⁶¹ and the Office of Management and Budget's (OMB) regulations¹⁶² require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this NOPR are being submitted to the OMB for its approval.

The Commission promulgated the information collection provisions of this rule in order to streamline the process by which qualifying small power production and cogeneration facilities may apply for certification and to eliminate unnecessary delays in processing certification applications. In addition, the Commission encourages facilities to follow an alternative self-qualification procedure, which reduces the filing requirement to an affidavit providing a basic description of the facility and a statement that it meets the Commission's criteria. In either case,

¹⁵⁶ See 18 CFR 292.304(e) (1987); ADFAC NOPR.

¹⁵⁷ Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), III FERC Statutes and Regulations ¶ 30.783 (Dec. 10, 1987).

¹⁵⁸ 18 CFR 380.4 (1987).

¹⁵⁹ 18 CFR 380.4(a)(2)(ii) (1987).

¹⁶⁰ 5 U.S.C. 605(b) (1982).

¹⁶¹ 44 U.S.C. 3501-3520 (1982).

¹⁶² 5 CFR 1320-12 (1985).

these filings are on a one-time only basis.

For a small power production or cogeneration facility that files an application for certification, the information collection burden is estimated to be 22 hours per response. The number of likely respondents is 254 based on FY 1987 filings.

For facilities that choose the self-qualification procedure, the information collection burden is estimated to be approximately one hour per response. The number of likely respondents is 523 based on FY 1987 filings.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Kenneth Thomas at (202) 357-5253). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

X. Comment Procedures

A. Written Comments

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should refer to Docket No. RM88-17-000. Written comments received on or before October 27, 1988, will be considered by the Commission. Replies to written comments must be filed with the Commission on or before November 28, 1988. Replies to written comments may not exceed 15 double spaced pages. An original and 14 copies of the comments should be filed with the Secretary.

All written comments will be placed in the Commission's public files, and will be available for public inspection in the Commission's Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

B. Public Hearing

The Commission is scheduling a public hearing to be held November 16, 1988, to provide interested persons with an opportunity to make oral presentations of their views. A request to participate must be submitted in writing to the Office of the Secretary on

or before October 27, 1988. A request to participate must be filed separately from any comments filed in this proceeding.

The public hearing will not be of a judicial or evidentiary nature. There will be no cross-examination of persons presenting statements. However, the Commission may question these persons and an opportunity to respond orally will be provided. A stenographer will prepare a transcript of the hearing, which will be available in the public file for this proceeding, Docket No. RM88-17-000, in the Commission's Public Reference Room. Any further procedural rules will be addressed by the Commission at the hearing.

The hearing is intended to provide for a public discussion of the issues in this notice and is for oral presentations only.

List of Subjects in 18 CFR Part 292

Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Part 292, Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Stalon reserved the right to file concurring opinion. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,
Acting Secretary.

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

1. The authority citation for Part 292 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-824c (1982), as amended by Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Electric Consumers Protection Act of 1986, Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982), as amended.

2. In § 292.202, paragraphs (b), (d), (e) and (h) are revised and paragraphs (s) and (t) are added to read as follows:

§ 292.202 Definitions.

(b) "Waste" means an energy source, other than biomass, that has essentially no commercial value at the time and place in which it is produced. "Waste" includes, but is not limited to, the following:

(1) Anthracite refuse that has a heat content of 6,000 Btu or less per pound and has 45 percent or more ash;

(2) Anthracite culm produced prior to July 23, 1985;

(3) Bituminous coal refuse that has a heat content of 9,500 Btu per pound or less and has 25 percent or more ash;

(4) Top or bottom subbituminous coal that:

(i) Has a heat content of 8,000 Btu per pound or less and has a sulfur content of 1.5 percent or more; and

(ii) Has been determined to be waste by the Bureau of Land Management;

(5) Lignite produced in association with the production of montan wax and lignite that becomes exposed as a result of such an operation;

(6) Gaseous fuels except:

(i) Synthesis gas from coal; and

(ii) Natural gas (including natural gas liquids and liquefiables) from gas and oil wells unless the natural gas meets the requirements of § 2.400 of this chapter;

(7) Petroleum coke that cannot be commercially marketed;

(8) Rubber tires that cannot be commercially marketed;

(9) Plastics that cannot be commercially marketed; and

(10) Materials that a government agency has certified for disposal by combustion.

(d) "Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful power output, and at least some of the reject heat from the power production is then used to provide useful thermal energy;

(e) "Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and at least some of the reject heat emerging from the process is then used for power production;

(h) "Useful thermal energy output" of a topping-cycle cogeneration facility means:

(1) The thermal energy made available for use in an established industrial or commercial process, or used in a heating or cooling application; or

(2) The thermal energy made available for use in a nonconventional industrial or commercial process if the revenues received from the sales of heat or steam are equal to or greater than the cost of an equivalent quantity of the qualifying facility's fuel input.

(s) "Power production capacity" means the maximum gross electric power output capability of a facility that can be safely and reliably achieved under favorable operating conditions over several years minus auxiliary loads necessary for power production. Power production capacity must be measured at the facility busbar.

(t) "Sequential use" of energy means the use of:

(1) Reject heat from a power production process at least some of which is then used in a thermal application (topping-cycle facility); or

(2) Reject heat from a thermal application at least some of which is then used for power production (bottoming-cycle facility).

3. In § 292.204, paragraph (b)(2) is revised to read as follows:

§ 292.204 Criteria for qualifying small power production facilities.

* * * * *

(b) Fuel use.

* * * * *

(2) Use by the facility of energy sources other than the primary energy sources may not, in the aggregate, exceed ____¹ percent of the total energy input of the facility on an annual basis beginning with the in-service date of the facility.

4. In § 292.205, paragraphs (a) and (b)(1) are revised to read as follows:

§ 292.205 Criteria for qualifying cogeneration facilities.

(a) Operating and efficiency standards for topping-cycle facilities.

(1) *Operating standard.* For any topping-cycle cogeneration facility, the useful thermal energy output of the facility, on an annual basis beginning with the in-service date of the facility, must be no less than 5 percent of the total energy output.

(2) *Efficiency standard.*

(i) for a topping-cycle cogeneration facility, the installation of which began on or after March 13, 1980, and for which more than 50 percent of the energy input is natural gas or oil, the useful power output of the facility plus one-half of the useful thermal energy output, on an annual basis beginning with the in-service date of the facility:

(A) Subject to paragraph (a)(2)(i)(B) of this section, must be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; or

(B) If the useful thermal energy output is less than 15 percent of the total energy output of the facility, must be no less than 45 percent of the total energy

input of natural gas and oil to the facility.

(ii) For a topping-cycle cogeneration facility not subject to paragraph (a)(2)(i) of this section, there is no efficiency standard.

(b) Efficiency standards for bottoming-cycle facilities.

(1) For a bottoming-cycle cogeneration facility with supplementary firing, the installation of which began on or after March 13, 1980, the facility, on an annual basis beginning with its in-service date:

(i) Must have a useful power output of no less than 45 percent of the energy input of natural gas and oil used for supplementary firing; and

(ii) Must not have an energy input from fuel used for supplementary firing as expressed in Btus that exceeds 50 percent of the energy input for the thermal process.

* * * * *

5. Section 292.207 is revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

(a) Self-Qualification.

(1) A small power production facility or cogeneration facility that meets the criteria established in § 292.203 is a qualifying facility.

(2) The owner or operator of a facility qualifying under this paragraph must file an affidavit with the Commission signed by the owner, operator, or authorized representative of the facility that includes:

(i) The name and address of the applicant and location of the facility;

(ii) A brief description of the facility, including a statement identifying the facility as either a small power production facility or a cogeneration facility;

(iii) The primary energy source used or to be used by the facility;

(iv) The power production capacity of the facility; and

(v) A statement that the facility meets the criteria established in § 292.203 of this part.

(3) A facility that self-qualifies under this paragraph must also provide the utility with which it expects to interconnect a copy of the affidavit described in paragraph (a)(2) of this section.

(4) Unless a utility files an objection with the Commission within 90 days of receiving the affidavit described in paragraph (a)(3) of this section, the utility must meet its obligations with respect to that qualifying facility as provided in § 292.303 of this Part.

(b) Optional procedure

(1) *Application for Commission certification.* In lieu of the certification

procedures in paragraph (a) of this section, an owner or operator of a facility may file with the Commission an application for Commission certification that the facility is a qualifying facility. The application must be accompanied by the fee prescribed by Part 381 of this chapter.

(2) General contents of application.

(i) An applicant requesting certification of a facility as a qualifying small power production facility under this paragraph must provide a completed and signed FERC Form 556-A.

(ii) An applicant requesting certification of a facility as a qualifying cogeneration facility under this paragraph must provide a completed and signed FERC Form 556-B.

(3) Commission action.

(i) Within 90 days after an application is filed, the Commission will issue an order granting or denying the application, tolling the time for issuance of an order, or setting the matter for hearing. An order that denies certification will identify the specific requirements that were not met. If an order is not issued within 90 days of the filing date of the complete application, the application is granted.

(ii) For purposes of this paragraph, the date an application is filed is the date the Office of the Secretary receives all the information necessary to comply with the requirements of this Part.

(4) Notice.

(i) Applications for certification filed under this paragraph must include a copy of a notice of the request for certification for publication in the *Federal Register*. The notice must state the applicant's name, the date of the application, and a brief description of the facility for which qualification is sought. This description must include:

(A) A statement indicating whether such facility is a small power production facility or a cogeneration facility;

(B) The primary energy source used or to be used by the facility;

(C) The power production capacity of the facility; and

(D) The location of the facility.

(ii) The notice must be in the following form:

(Name of Applicant)

Docket No. QF-

Notice of Application for Commission Certification of Qualifying Status of a (Small Power Production) (Cogeneration) Facility

On (date of application was filed), (name and address of applicant) filed with the Federal Energy Regulatory Commission an application of a facility as a qualifying (small

¹ Editorial note: The Final rule will specify a figure.

power production) (cogeneration) facility pursuant to § 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

(Description of facility)

A person who wishes to be heard or to object to granting qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. A motion or protest must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. A person who wishes to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

(c) Revocation of qualifying status.

(1) The Commission may revoke the qualifying status of a qualifying facility which has been certified under this section if such facility fails to comply with any of the statements contained in its application for Commission certification.

(2) Prior to undertaking any substantial alteration or modification of a qualifying facility which has been certified under this section, a small producer or cogenerator may apply to the Commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status.

(3) For purposes of this section, the following alterations or modifications will not result in revocation of qualifying status:

(i) A change in the name of the corporation that owns the qualifying facility;

(ii) A change in the ownership of a small power production facility if the new and remaining owners are not affiliated with an electric utility, an electric utility holding company, or a combination thereof;

(iii) A change in the ownership of a cogeneration facility if:

(A) The new and remaining owners are not affiliated with an electric utility, an electric utility holding company, or a combination thereof; and

(B) The user of the thermal energy produced by the cogeneration facility is not affiliated with the owner of the cogenerator facility;

(iv) A change in the location of a proposed qualifying small power production facility if the new location is not within one mile of another small power production facility that:

(A) Is owned by the same person(s); and

(B) Uses the same primary energy source(s);

(v) A decrease in the amount of natural gas or oil used by a cogeneration facility if the efficiency and operating standard calculations for the facility remain at or above the minimum limits for those standards;

(vi) A decrease in the amount of fossil fuel used by a small power production facility if the total use of fossil fuel remains below the limit specified in § 292.204(b)(2) of this part;

(vii) A change in the primary energy source of a small power production if the new primary energy source is:

(A) Biomass, a renewable resource, or a geothermal resource;

(B) One of the waste energy sources listed in § 292.202(b) of this part; or

(C) A combination of the energy sources in paragraphs (c)(3)(vi)(A) and (c)(3)(vi)(B) of this section;

(viii) A change in the energy source of a cogeneration facility if the new primary energy source does not result in an increase in the facility's use of natural gas or oil;

(ix) An additional use of a cogeneration facility's thermal output if the original uses are maintained as specified in the original certification order;

(x) An increase in the efficiency or operating standard calculation of a cogeneration facility;

(xi) A change in the power production capacity of a qualifying small power production facility if the facility's capacity does not exceed the capacity limit established for that particular type of facility; or

(xii) A change in the power production capacity of a cogeneration facility if the efficiency and operating standard calculations for the facility remain at or above the minimum limits for those standards.

(4) A qualifying facility that has been certified under this section must notify the Commission, in writing, of a change listed in paragraph (c)(3) of this section.

[Editorial Note. The following forms and Statements will not appear in the Code of Federal Regulations]

Appendix A—Forms and Statements

[FERC Form No. 556-A]

Application for Certification of Qualifying Facility Status as a Small Power Production Facility

(To be completed for the purpose of demonstrating conformance with the qualification criteria of § 292.203(a))

1a. Full name of applicant:

1b. Full address of applicant:

1c. Indicate whether applicant is the owner and/or the operator of the facility:

1d. Signature of authorized individual:

2. Person to whom communications regarding the application may be addressed:

Name:

Title:

Telephone number:

Mailing address:

3. Location of facility to be certified:

State:

County:

City or town:

Street address (if known):

4a. Is any owner of the facility an electric utility or electric utility holding company or any combination thereof?

4b. If no, sign a statement that no electric utility or electric utility holding company, or any combination thereof, has or will have an ownership interest in the facility to be certified.

4c. If yes, identify each owner, provide the relevant agreement, and for each owner indicate the percentage of ownership (voting securities) and for each owner provide, as Attachment A, a description of the relevant equity interest of the utility or holding company.

DESCRIPTION OF THE FACILITY

5a. Describe the principal components of the facility:

Boilers:

Prime movers:

Electric generators:

5b. Indicate the net electric power production capacity of the facility:

5c. Indicate the date installation of the facility commenced or will commence:

5d. Describe the primary energy source (Specification of an energy source for which the Commission has not established a generic standard in section 292.202(b) requires additional documentation):

6. Provide the annual energy input in terms of Btu, and the percentage of the total annual energy input, of the facility regarding the use of:

Natural Gas:

Oil:

Coal:

Other (Specify, e.g., electric steam, etc.):

7a. If any other small power production facility located within one mile of the facility in this application is owned by the same person and uses any of the same primary energy source, provide the following information about the other facility:

Facility name (as filed with the FERC):

QF docket number (as assigned by the FERC):

Name of Common Owner:

Common primary energy source:

Power production capacity (in MW):

8. Response to this is optional. Discuss particular characteristics of the facility which the applicant believes might bear on its eligibility for certification:

Public reporting burden for this collection of information is estimated to average 16

hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to Kenneth Thomas (202) 357-5253, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FERC Form No. 556-B]

Application for Certification of Qualifying Facility Status as a Cogeneration Facility

(To be completed for the purpose of demonstrating conformance with qualification criteria of § 292.203(b))

- 1a. Full name of applicant:
- 1b. Full address of applicant:
- 1c. Indicate whether applicant is the owner and/or the operator of the facility:
- 1d. Signature of authorized individual:
2. Person to whom communications regarding the application may be addressed:

Name:

Title:

Telephone number:

Mailing address:

3. Location of facility to be certified:

State:

County:

City or town:

Street address (if known):

- 4a. Is any owner of the facility an electric utility or electric utility holding company or any combination thereof?

4b. If no, sign a statement that no electric utility or electric utility holding company, or any combination thereof, has or will have an ownership interest in the facility to be certified.

4c. If yes, identify each owner, provide the relevant agreement, and indicate the percentage of ownership (voting securities) and for each owner provide, as Attachment A, a description of the relevant equity interest of the utility or holding company.

DESCRIPTION OF THE FACILITY

5a. Describe the cogeneration system, including whether the facility is a topping- or bottoming-cycle facility.

5b. Describe the principal components of the facility:

Boilers:

Prime movers:

Electric generators:

5c. Indicate the net electric power production capacity of the facility:

5d. Indicate the date installation of the facility commenced or will commence:

6. Provide, as Attachment B, a cycle diagram showing the physical arrangement of system components, interconnecting energy flow paths and operating information at average hourly facility output including:

All fuel flow inputs (Btu/hr):

Electric output (KW or MW):

Mechanical output (hp):

Working fluid (e.g. Steam) conditions at input and output flow of prime mover(s) and

at delivery to and return from useful thermal applications:

Flow rates (lbs/hr):

Temperature (deg. F):

Pressure (psia):

Enthalpy (Btu/lb):

7. Provide the annual energy input in Btu for each of the primary energy sources (use lower heating value for natural gas or oil):

8. Provide the annual energy input in Btu for each of the energy sources used for supplementary firing (use lower heating value for natural gas or oil):

9. Provide the annual useful power output in equivalent Btu showing the net electric energy output (MW/h) and, if any, the net mechanical energy output (horsepower/hour):

10. Response to this is optional. Discuss particular characteristics of the facility which the applicant believes might bear on its eligibility for certification:

FOR TOPPING-CYCLE FACILITIES (Items 11-13)

11a. Provide a description of the heating and cooling uses and/or the industrial or commercial process for which the thermal energy output is applied.

11b. Provide for facilities where the useful thermal output does not employ an established industrial process, the average cost of primary energy (\$/million Btu) and the average revenue received for useful thermal output (\$/million Btu) and for affiliated thermal user show that the product's sales recovers such cost:

12a. Useful Thermal Energy Output
For heating and cooling uses:

Provide the annual useful thermal energy output in terms of the integrated usage, accounting for hourly and seasonal variations (Btu):

For process uses:

Provide the annual thermal energy output sent to process less delivery losses and less any energy return from process in terms of:

Enthalpy (Btu/lb):

Pressure (psia):

Temperature (deg. F):

Average annual flow rate (lbs/hr):

12b. Provide that portion of the total annual thermal energy output reported in 12a which is the result of any supplementary firing (Btu):

12c. Demonstrate, in Attachment C, that the annual useful thermal output and annual useful power output are in compliance with the operating standard.

13. If oil or natural gas inputs are greater than 50% of the annual fuel input in Attachment D, demonstrate that the annual useful thermal output, annual useful power output, and annual natural gas or oil input are in compliance with the applicable efficiency standard.

FOR BOTTOMING-CYCLE FACILITIES (Items 14-15)

14. Provide a description of the industrial or commercial process to which the energy input to the system is first applied and from which the reject heat is then used for power production.

15a. Demonstrate, in Attachment E, that the annual useful power output and annual

natural gas or oil input from supplementary firing are in compliance with the applicable efficiency standard.

15b. Demonstrate that energy input for supplementary firing does not exceed 50% of the energy input to the primary energy input.

Public reporting burden for this collection of information is estimated to average 28 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to Kenneth Thomas (202) 357-5253, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Concurring Opinion of Commissioner Charles A. Trabandt

I concur in the issuance of this Notice of Proposed Rulemaking (NPR) on the regulations governing implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA), with several observations and reservations.

First, I am pleased that the Commission now is finally addressing the PURPA implementation issues highlighted in the four regional Public Conferences on PURPA held in early 1987. Those issues have been awaiting action since then, because of the Commission's primary focus on the three electric policy NPRs in Docket Nos. RM88-4, 5, and 6. While I preferred strongly that we take up and dispose of these issues first, at least we can finally act on them in the broader context of the other pending proposals. Hopefully, in the end, we will be successful in developing a consistent and complementary set of obviously interrelated policies for the implementation of PURPA and the Federal Power Act (FPA) under these four NPRs, as well as the electric transmission NPR under development at this time by the Commission staff.

I urge all interested parties in their review of this NPR to carefully consider that need for consistent and complementary policies across the broad spectrum of interrelated issues presented in the four NPRs and under review in the transmission area. Parties whenever possible should reflect such consideration and conclusions on the various interrelated issues in their comments in this docket. To that end, I have included as an attachment my opening statement at the public hearings on RM88-4, 5 and 6 on July 21 and 22, 1988. I particularly invite the attention of interested parties to the alternate approach for the pending NPRs I recommended on page 4 of the statement. I would appreciate it if commenters would comment on how the proposals in the instant NPR could be made consistent with and complementary to such an alternate approach.

Second, as a general matter, this proposal deals with another whole series of PURPA issues, including self certification of qualifying facilities, utility ownership of QFs, Efficiency and Operating standards, and a series of technical requirements affecting

fuels and technology. The proposal could make sweeping changes in the various requirements, which control the types of projects that qualify for PURPA benefits. When one stands back from the 120 page proposal, the potential bottom line is obvious to any observer. The proposal could greatly expand PURPA coverage in terms of technology, fuel, utility ownership, operations and otherwise.

As a result, FERC under this NOPR could dramatically liberalize qualification for PURPA and open the floodgates for an entire new generation of Qualified Facilities (QFs), which under the old rules would have to be non-QF Independent Power Producers (IPPs). The practical result would be that many independent power projects now would receive PURPA benefits, not be subject to the Public Utility Holding Company Act, and avoid certain state regulation. As a result, the proposal could be yet another way to force an independent competitive generating sector in the name of the primacy of economic efficiency. Notwithstanding Commission staff protestations to the contrary at the July 13, 1988, Commission meeting, there is good reason to believe that the underlying objective here is to make IPPs eligible for qualifications as QFs and receipt of PURPA benefits. I do not believe that result is justified by the existing record.

Fourth, I have serious concerns about the ownership issue in this NOPR. In my judgment, Congress made unambiguously clear its intent with regard to ownership of QFs in PURPA.

Under sections 3(17)(C) and 3(18)(B) of the FPA as amended by PURPA a QF can only be "owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)." (16 U.S.C. 796(17)(C) and (18)(B) (1982)).

The terms "qualifying small power production facility" and "qualifying cogeneration facility" exclude facilities which are owned by a person who is primarily engaged in the generation or sale of electric power. Electric utilities may participate in an entity which owns such facilities with other persons and such entity could qualify under these definitions. *The test of this case is whether the entity which owns the facility is primarily engaged in the generation or sale of electric power other than in connection with its ownership of the cogeneration facilities or small power production facilities.*

(H.R. No. 1750, 95th Cong., 2nd Sess. 89, reprinted in 1978 U.S. Code Cong. & Ad. News 7797, 7823, and in FERC Statutes and Regulations § 5151 at 5097). (Emphasis added)

In its Notice of Proposed Rulemaking (NOPR) leading to the adoption of its current ownership criteria, the Commission stated:

[U]nder a literal interpretation of the Conference Committee's statement, several electric utilities could form a subsidiary which owned small power production or cogeneration facilities. Such a subsidiary would constitute an entity which is not primarily engaged in the generation or sale of electric power other than in connection with its ownership of cogeneration or small power

production facilities. Under such an interpretation the subject facility would be eligible to receive qualifying status.

(Docket No. RM79-54, 44 Fed. Reg. 3882, FERC Statutes and Regulations, Proposed Regulations 1977-1981 § 32.028 at 32,333 (1981))

However, the Commission declined to adopt this position, because it believed that "the thrust of section 201 of PURPA is to limit the advantages of qualifying status to cogeneration and small power production facilities which are not owned exclusively by electric utilities or their subsidiaries." Consequently, the Commission proposed that QFs be limited to 50 percent ownership by electric utilities, public utility holding companies, or their subsidiaries (hereinafter referred to as "ownership restriction").

In the final rule, the Commission noted that several commenters to the NOPR agreed with the Commission that, under a literal interpretation of the Conference Report, electric utilities could form subsidiaries which would own QFs, and such subsidiaries would not be "primarily engaged in the generation or sale of electric power other than in connection with its ownership of cogeneration or small power production facilities." [See Order No. 70, Final Rule, Small Power Production and Cogeneration Facilities—Qualifying Status, Docket No. RM79-54, 45 Fed. Reg. 17595, FERC Statutes and Regulations, Regulations Preambles 1977-1981 § 30.134 at 30,953 (1980)]. Thus, utility subsidiaries could own cogeneration and small power production facilities without such facilities losing their qualifying status. However, the Commission again declined to adopt this position in its final rule, restating its belief that the thrust of section 201 was to limit the advantages of qualifying status to facilities which are not "owned primarily" by electric utilities or their subsidiaries. The Commission concluded that the rulemaking comments did not provide sufficient reasons to change the percentage.

The threshold question for the Commission today is whether PURPA, as a matter of law apart from any relevant policy consideration arising from the pending NOPRs, would sanction the ownership through an affiliate or subsidiary of a QF by an electric utility primarily engaged in the generation or sale of non-cogeneration electric power. Or, put another way, whether the Commission's judgment at the time of initial PURPA implementation not to allow corporate veils to be used to extend PURPA section 210 benefits to electric utilities remains legally valid. On this issue, the plain meaning of the statute and the clear intent of Congress in the Conference Report support persuasively the original conclusion of the Commission adopted in the 1980 regulations.

Nevertheless, the Commission's Office of General Counsel (OGC) has completed an exhaustive, if not necessarily wholly objective, review of the legislative history of this issue in PURPA and not surprisingly concluded that under settled rules of statutory construction the Commission now could reinterpret legally the ownership limitation to allow utility subsidiaries to own 100% of QFs. The OGC opines that permitting

utility subsidiaries to own 100% of the QFs thus should not be viewed as a reversal of the Commission's prior interpretation of PURPA, but may be characterized solely as a "new policy position." That so-called new policy position could be adopted, accordingly to OGC, if the Commission obtains evidence in this Docket supporting the conclusion that 100% utility subsidiary ownership fosters the purpose of PURPA to encourage cogeneration, without offending Congressional concern about exempting electric utilities from the FPA.

That conclusion here also would support as a matter of law, it is argued, (a) 50% direct ownership of QFs by an electric utility or 100% direct ownership if not more than 50% of revenues are attributable to non-QF power sales; (b) 100% direct ownership by (i) subsidiaries of electric utilities, which could include an IPP subsidiary, and (ii) electric utility holding companies; and (c) QF direct ownership of IPPs where no more than 50% of the revenues came from non-QF power sales. These ownership possibilities could be coupled to a restriction in some form on sales by utility-subsidiary QFs to the parent utility or on location of the utility-subsidiary QF in the utility's service territory, if the Commission decided such restriction was necessary because of concerns about utility monopoly power or potential abuses due to self-dealing. Thus, OGC concludes, the Commission has broad latitude in this rulemaking docket to reinterpret the ownership test in the statute as a "new policy position" and completely restructure the 1980 regulations to effectuate the new policy position.

I shall await the comments of interested parties as to the OGC position, rather than debate it at length at this point in the proceedings. Suffice it to say that thus far I remain unmoved by the analysis presented to the Commission, which might be characterized uncharitably as revisionist legislative history and analysis, to the effect that somehow Congress didn't really mean what it said or, in the alternative, Congress should not have meant it, in light of our new policy position. For me, any effort ten years after enactment of PURPA to find the corporate veil suddenly impenetrable, as if resurrected *sua sponte* from the legal trash heap, will require a great deal more in objective and persuasive argumentation than that presented thus far to the Commission.

Next, the Commission here is proposing to make a fundamental shift in the processing of QF applications from Commission certification to self-certification. The Commission already has received communications from QF and independent power officials urging a cautious approach to this proposal. In a nutshell, they are very concerned that the current form of Commission certification may continue to be necessary in order to provide adequate legal certainty of the project's eligibility for QF status and resulting PURPA benefits. That legal certainty is particularly important for the financial community in the context of project-type financing and for electric utilities in terms of applicable law and avoided cost rates. I believe that the Commission must be

very careful in assessing and responding to those quite legitimate concerns reflecting the real world requirements for QF project development. The Commission, in my judgment, cannot attempt to abandon Commission certification unless and until there is persuasive evidence that self-certification as a practical matter will be fully adequate to provide the necessary legal certainty to assure the predictable development and financing of future QF projects. Only that approach would support the fundamental PURPA section 210 objective of encouragement of cogeneration.

Finally, I remain concerned about the potential impact and effect of the proposed changes in the technical area, particularly the sequential use of energy. The proposal here would liberalize significantly the current requirement such that potentially much larger power plants could qualify for QF status. This is one example of the effect where IPP-type projects may now more easily qualify for QF status, thus expanding the scope of the PURPA cogeneration program beyond original Congressional intent. I recommend that commenters review all the technical proposals and carefully assess the potential aggregate effects and impact on the current program.

At the July 13 meeting, I pointed out the proposed 15% bright line test for the permissible "minor uses" of fossil fuels would have the obvious effect of prohibiting the qualification of innovative solar energy technology QFs, such as the LUZ projects. I am pleased that the NOPR has been modified to acknowledge that problem and seek comment on the spectrum of other possibilities available to address the issue. Without prejudging the preferred option, I believe the Commission must balance carefully the desire for administrative expediency in processing applications, on one hand, and the continued importance of pursuing available renewable resource technologies for the near term and long range future, on the other. In the end, we must strike a responsible compromise between those two considerations.

Before concluding, I want to note that the procedures for public comment were modified at the July 27 Commission meeting to provide that the Commission could ask questions of witnesses at the public hearing and that they would be allowed to answer orally, as well as in writing for the record. While this may seem to be a small matter, the Commission over the last year has refused to allow witnesses at public hearings to provide oral responses to Commissioner questions. As I have previously stated, that restriction rendered the public hearings into a public farce and a gross embarrassment to the Commission, to say nothing of the extreme and understandable frustration experienced by the muzzled witnesses. The whole approach, in my judgment, made a mockery of the intended due process aspect of the public hearing process, and prevented the Commission from having the open dialogue with witnesses so essential to Commission and public understanding of these issues. I am pleased that the modification was adopted and further that it will be a precedent for all future public hearings. It is

time to end such due process excesses in our public comment procedures.

In conclusion, I support the issuance of this NOPR for public comment. It appears that it has been developed in many respects as a companion to the three pending electric NOPRs, as another step to mandate a competitive electric generating sector comprised of IPPs and QFs, and with the QF benefits extended more broadly to IPPs. In some sense, this NOPR would narrow the gap between IPPs and QFs and make the QF program more comparable to and parallel with the IPP NOPR. At the same time, these PURPA implementation issues have deserved resolution since the public hearings in early 1987, irrespective of the other electric policy NOPRs. Consequently, the Commission should proceed to address them now while continuing the rulemaking proceeding in the other dockets. Subject to these several observations and reservations noted previously, I concur.

Charles A. Trabandt,
Commissioner.

Public Hearings on RM88-4, RM88-5 and RM88-6 Opening Statement of Commissioner Trabandt

July 21 and 22, 1988.

I want to join my colleagues in welcoming the large number of witnesses for these two days of hearings on the electric policy Notices of Proposed Rulemakings (NOPR) in Docket Nos. RM88-4, RM88-5 and RM88-6. These are very important hearings, indeed, on the Commission's three interrelated proposals in the areas of all source competitive bidding (ASCB), Independent Power Producers (IPP) and administrative determination of avoided cost (ADFAC) under the Public Utility Regulatory Policies Act (PURPA), including the *Orange and Rockland* decision. At the outset, I would like to make some brief observations for the benefit of the witnesses and other interested parties.

U.S. Secretary of Energy John Herrington last year stated that reform of electric power regulation must *not* be undertaken just for the sake of change. Rather, the objective of such reforms must be to make the system work *better*, not just to make it work *differently*. The public comments filed in these dockets and the public testimony today and tomorrow will provide the Commission with an assessment of whether these proposals, in fact, will make the current system work better or just differently. A quick-look review of the filed comments indicates that the proposals clearly would *not* improve the system and, in all likelihood would make the system work much worse, as well as differently. In fact, the comments reflect virtually no support for the particular ASCB proposal and indicate generally strong opposition on the merits from all segments of industry, states and consumers.

I also want to highlight for the witnesses and other interested parties the comments of Senator J. Bennett Johnston, distinguished Chairman of the U.S. Senate Committee on Energy and Natural Resources, at the confirmation hearing last week for Betsy

Moler, who was nominated by President Reagan for FERC Commissioner. Senator Johnston stated that it is premature to adopt these rulemakings at this time, for a number of reasons. First, because there are too many holes in the rulemakings, too many things that haven't been thought out. It is in effect incomplete. Second, because Ms. Moler and any other new Commissioners ought to have a chance to take a look at the rulemakings and be involved in the rulemakings and to have the time to do so. He would hope that the Commission will slow down our process and not rush to judgment. He would regard that as a rush to judgment if we tried too quickly to enact these rules, because he thinks it's just premature and they have not been thought out. Senator Johnston characterized his comments as a statement which he hoped will get over to FERC and concluded by saying, "I hope that message gets over there." Senator Domenici concurred with Chairman Johnston's view that these rulemakings ought to go slow. It is my belief that Chairman Johnston's comments reflect a bipartisan consensus in the Senate. That fact should be of critical importance to this Commission in deciding how to proceed with these NOPRs.

Congressman Phil Sharp of Indiana, the distinguished Chairman of the Energy and Power Subcommittee in the U.S. House of Representatives, commented last year about Federal-state responsibilities under PURPA, and he reiterated those remarks last month in a letter to FERC.

PURPA's evolution over the past ten years—both positive and negative—is in part the result of the division of authority between FERC and the state commissions. That bifurcation is a proper exercise in both Federalism and energy policy, and I urge FERC to remain sensitive to the key role that the state commissions play. The appropriate role for FERC must be to clarify Federal law—where necessary—and to provide guidance with advice—where appropriate—(but) not to mandate any particular model or approach (for the states).

Again, a quick-look review of the filed comments indicates that the proposals are *not* sensitive at all to the key role that state commissions play. Quite the contrary, the proposals would mandate a particular model and a particular approach for every state. The proposals would have sweeping preemptive effect, which would largely federalize state implementation of PURPA and preempt inconsistent state laws and actions in electric regulation. In particular, almost all existing state competitive programs would be struck down under the proposals.

Furthermore, closely related Commission action in June in the *Orange and Rockland* rehearing and in the decision in the *Florida Industrial Cogenerators* case have demonstrated beyond any reasonable doubt that there really is only one way to proceed—and that is the FERC way. The procedural and substantive aspects of those cases reflect a recurring FERC approach of unabashed Federal arrogance and inherent Federal superiority, with profound negative implications for these electric NOPRs. In

those cases, FERC established itself as an appeals court for all state PURPA actions with a "star chamber" process. FERC, as a Federal "Big Brother," has issued these Federal dictatorial fiat as part of its concerted effort to federalize all implementation of PURPA and regulation of the generation sector of the electric industry. With the FERC way as the only way, FERC will virtually mandate the restructuring of the electric generation sector.

I have repeated many times over the past year the threshold issue of the need for these interrelated proposals. What is the real objective? What is broke that needs to be fixed? What is the problem FERC is attempting to solve with these initiatives? The proposals argue that the "regulatory compact" is broken irreversibly and must be replaced with ASCB and IPP in a newly competitive and independent generating sector to achieve the primacy of economic efficiency and to ensure adequate supplies of electric power in the future. The filed comments do not agree that the regulatory compact is broken, nor that ASCB and IPP will improve efficiency or better assure adequate supplies. To the contrary, the comments document decreased efficiency and less assured supply, with serious potential reliability risk, under these proposals.

In the real world of today, 28 or more states, including New York, New Jersey, Colorado and Washington most recently, have adopted, or are in the process of adopting, various forms of competitive processes for the selection of new electric generation facilities. Similarly, a growing number of utilities are soliciting bids for new generation capacity, with many thousands of megawatts already bid for several thousand megawatts of solicited capacity for utilities across the country. All of that state and utility activity has proceeded thus far without one single new word of regulations from FERC. And yet, those state competitive programs and utility solicitation programs, it appears, would be seriously threatened, if not wiped out completely, by these proposals for no apparent public policy purpose.

It also is quite apparent that the NOPRs inevitably will force a piecemeal decisionmaking process for Federal transmission policy contrary to the interests of all segments of the electric industry. The far better, and long overdue, approach to transmission reform is in a separate generic rulemaking specific to Federal transmission regulation. Otherwise, FERC will inevitably fall into the tyranny of small decisions so thoroughly discredited by Dr. Alfred Kahn and many others. Without any particular or clear vision of a comprehensive and cohesive transmission policy, we will make a series of discrete decisions, each one perhaps rational, which will add up to an irrational result. Even though each step will be conscious, the cumulative result will be largely inadvertent, because there is not a clear conception of what the ultimate outcome would or should be. Federal transmission policy is far too important to allow the tyranny of small decisions to be the result.

In a general way, then, how should the Commission proceed with the proposals in

the NOPRs in the face of the overwhelmingly negative public comments. I recommend that the witnesses, and those filing reply comments in August, consider the following approach. First, the bidding NOPR would become the functional equivalent of a policy statement approving state competitive processes under PURPA with general guidelines and very few, if any, specific requirements. Second, the ADFAC NOPR would be scaled back dramatically to address only the need for power and capacity payments issue, with a few general guidelines. Third, the IPP NOPR would provide some modest relief from current regulations, as in the January, 1988, *Orange and Rockland* IPP case. All transmission policy and Federal preemptive effects would be removed from the three pending proposals as a result. And, fourth, FERC would develop and issue a NOPR addressing on a generic basis reform of Federal transmission regulation, before adopting final rules in the other three pending dockets. I believe this approach would be generally consistent with the majority of public comments and urge its consideration by all parties.

I look forward to all the testimony. Thank you.

[FR Doc. 88-18181 Filed 8-16-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3430-1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking; extension of public comment period.

SUMMARY: On June 30, 1988, EPA published a proposed rulemaking in the Federal Register (53 FR 24735) to approve a revision to the Missouri State Implementation Plan (SIP). The purpose of this SIP revision is to attain the National Ambient Air Quality Standards for ozone in the Kansas City ozone nonattainment area. EPA Region VII received a request to extend the public comment period for 30 days. Therefore, the purpose of this notice is to extend the comment period deadline from August 1 to August 31, 1988.

DATE: Comments must be received by August 31, 1988.

ADDRESS: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker, (913) 236-2893; FTS 757-2893.

Dated: August 5, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88-18583 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP-7E3559, 8E3585/P457; FRL-3429-6]

Pesticide Tolerances for Ethyl 3-Methyl-4-(Methylthio) Phenyl (1-Methylethyl) Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances for regional registration be established for the combined residues of the nematocidal ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate (also referred to in this document as fenamiphos) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities kiwifruit and non-bell peppers. The proposed regulation to establish maximum permissible levels for residues of the pesticide in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 7E3559, 8E3585/P457], must be received on or before September 16, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m.,

Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick NJ 08903, has submitted pesticide petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administration, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the nematocide fenamiphos and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on certain raw agricultural commodities.

1. *PP 8E3585*. Petition submitted on behalf of the Agricultural Experiment Station of California for kiwifruit at 0.1 part per million (ppm).

2. *PP 7E3559*. Petition submitted on behalf of the Agricultural Experiment Stations of California and Puerto Rico and the U.S. Department of Agriculture for non-bell peppers at 0.6 ppm.

The petitioner proposed that use of fenamiphos on kiwifruit be limited to California and use on non-bell peppers be limited to California, Georgia, and Puerto Rico based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) for cholinesterase inhibition (ChE) at 1 ppm (equivalent to 0.025 milligram (Mg)/kilogram (kg/day) and no systemic

effects at 10 ppm (the highest dose tested)).

2. A 2-year feeding/oncogenicity study in rats with a NOEL for cholinesterase inhibition at less than 2.0 ppm (equivalent to 0.1 mg/kg/day) and no systemic effects at 10 ppm (equivalent to 0.5 mg/kg/day). The study was negative for oncogenic effects under the conditions of the study at all feeding levels.

3. An 18-month oncogenicity study in mice with feeding levels of 2, 10, and 50 ppm (equivalent to 0.3, 1.5, and 7.5 mg/kg/day), which was negative for oncogenic effects under the conditions of the study at all levels tested.

4. A three-generation reproduction study with no reproductive effects at 30 ppm (highest dose tested).

5. A teratology study in rabbits with developmental and maternal NOEL's at 0.5 mg/kg.

6. A neurotoxicity study in hens with no neurotoxicity damage at 12.5 mg/kg (highest dose tested).

7. In a metabolism study in rats, fenamiphos was metabolized to its sulfoxide and sulfone analogs with 50 percent excreted in the urine within 12 to 15 hours.

8. Genotoxicity studies including an Ames test (negative), a dominant lethal test in mice (negative), an *in vitro* assay in Chinese hamster ovary cells (negative for nonactivation assay at concentrations up to 130 micrograms/milliliter and for activation assay up to 230 micrograms/milliliter), and gene mutation using *Bacillus subtilis* (negative).

Data currently lacking include a teratology study in a second species. Data requirements for registration of fenomiphos are identified in a Registration Standard for the chemical, which was issued in June of 1987.

The acceptable daily intake (ADI), based on the 2-year feeding study in dogs with a NOEL for cholinesterase inhibition at 1.0 ppm (0.025 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.00025 mg/kg of body weight (bw)/day. The expected residue contribution (ARC) from existing tolerances is calculated to be 0.000098 mg/kg bw/day, which is equivalent to 39 percent of the ADI. The current action will contribute an additional 0.000006 mg/kg bw/day of residues to the human diet.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using a thermionic detector, is available in the *Pesticide Analytical Manual*, Vol. II (PAM II) for enforcement purposes. There are

currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.349 would protect the public health. No secondary residues in meat, milk, or eggs are expected since kiwifruit and non-bell peppers are not considered livestock feed commodities. Therefore, it is proposed that the tolerances for regional registration be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the *Federal Register* that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3559, 8E3585/P457]. All written comments filed in response to these petitions will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 2, 1988.

Edwith F. Tinsworth,
Director, Registration Division, Office of
Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

180—[AMENDED]

1. The authority citation For Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.349(c) is amended by adding and alphabetically inserting the raw agricultural commodities kiwifruit and nonbell peppers, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphorodithioate; tolerances for residues.

(c) * * *

Commodities	Parts per million
Kiwifruit.....	0.1
Peppers, non-bell.....	0.6

[FR Doc. 88-18454 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3621/P458; FRL-3429-5]

Pesticide Tolerance for N-(Mercaptomethyl) Phthalimide S-(O,O-Dimethyl Phosphorodithioate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the sum of residues of the insecticide N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) (also referred to in this document as phosmet) and its oxygen analog in or on the raw agricultural commodity crabapples. The proposed regulation was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4) in support of regional registration.

DATE: Comments, identified by the document control number [PP 8E3621/P458], should be received on or before September 16, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be

claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 8E3621 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for cholinesterase-inhibiting residues of the insecticide phosmet and its oxygen analog N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) in or on the raw agricultural commodity crabapples at 15 parts per million (ppm). The petition was later amended to propose a tolerance for crabapples at 20 ppm.

The petitioner proposed that use of phosmet on crabapples be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought.

The toxicological data considered in support of the proposed tolerance include:

1. A 2-year feeding study in dogs with a no-observed-effect level (NOEL) for brain and red blood cell cholinesterase inhibition (ChE) at 40 ppm (equivalent to 1 milligram (mg)/kilogram (kg)/day) and a systemic NOEL at 400 ppm (equivalent to 10 mg/kg/day).

2. A 2-year oncogenic study in Charles River strain of albino rats with dosage levels of 20, 40, and 400 ppm (equivalent to 1, 2, and 20 mg/kg/day) was negative for oncogenic effects under the conditions of the study. This study is considered inadequate (supplementary data) for the evaluation of oncogenic potential because the number of animals sacrificed at the end of the study was too small to fully evaluate tumor response. The rat study demonstrates NOELs for systemic effects and plasma, red blood cells and brain cholinesterase inhibition at 40 ppm.

3. A three-generation reproduction study in rats with no reproductive effects at 80 ppm (highest dose tested).

4. A teratology study in rabbits with a NOEL for teratogenic effects at 60 mg/kg/day (highest dose tested).

5. A teratogenic study in monkeys with a NOEL for teratogenic effects at 8 mg/kg/day (highest dose tested).

6. Mutagenicity studies including an assay in *Salmonella typhimurium* (positive, with and without metabolic activation); a mouse lymphoma multiple endpoint test for forward mutations (positive, with and without metabolic activation); mouse lymphoma multiple endpoint test cytogenic assay (positive for structural chromosomal aberrations without metabolic activation); a cell transformation study using BALB/3T3 cells (positive); a micronucleus test (negative); and a test with human fibroblast DNA (negative, with and without activation).

7. A 2-year oncogenicity study in B6C3F1 mice with dosage levels of 5, 25, and 100 ppm (equivalent to 0.75, 3.75, and 15 mg/kg of body weight/day) demonstrated an increase in hepatocellular adenomas (also reflected as an increase in the incidence of adenomas/carcinomas combined) at the highest dose level tested (100 ppm) in male mice. There was also evidence for hyperplasia in male mice. The results of the interim sacrifice indicates that the liver tumors occurred in male mice with reduced latency. No significant increase in carcinomas occurred, however, indicating that there was no clear trend of progressing to malignancy. Phosmet also produced positive trends for

adenomas, carcinomas, and both tumor types combined in female mice. None of these tumors were significantly elevated at the highest dose level tested, there was no hyperplasia, and no indication that the tumors occurred with a reduced latency period.

The Agency has concluded that the data constitute limited evidence of oncogenicity and has tentatively classified phosmet as a Category C carcinogen (possible human carcinogen), pending the submission and evaluation of a repeat 2-year oncogenicity study in rats and additional mutagenicity studies. In accordance with the "Guidelines for Carcinogen Risk Assessment," published in the *Federal Register* of September 24, 1986 (51 FR 33992), the Agency has decided not to develop a quantitative estimation of the oncogenic potential of phosmet until the requested studies are submitted and evaluated in conjunction with the mouse oncogenicity study.

The acceptable daily intake (ADI), based on the 2-year feeding study in rats with a NOEL of 2.0 mg/kg/day and using a 100-fold safety factor, is calculated to be 0.02 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.032028 mg/kg/day. The current action will increase the TMRC by 0.000008 mg/kg/day, a 0.025 percent increase. The Agency concludes that the amount of phosmet added to the diet from the proposed use will not significantly increase dietary exposure. Thus the tolerance established by this proposed rule is considered to pose a negligible increment in risk.

The nature of the residues for the proposed use on crabapples is adequately understood. The residues of concern consist of the parent compound phosmet and its oxygen analog. An adequate analytical method, gas chromatography, is available in the *Pesticide Analytical Manual*, Vol. II (PAM II), Method III, for enforcement purposes. There is no expectation of secondary residues in meat and milk since crabapples are not considered an animal feed commodity. There are currently no actions pending against the continued registration of this chemical. Since the ADI is established based on systemic effects, tolerances for phosmet and its oxygen analog are no longer expressed in terms of cholinesterase-inhibiting residues. The tolerance regulation under 40 CFR 180.261 was recently revised to express phosmet tolerances in terms of "the sum of the residue for N-(mercaptomethyl) phthalimide S-(O,O-dimethyl

phosphorodithioate) and its oxygen analog."

Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the *Federal Register* that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 8E3621/P458]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 2, 1988.

Edwin F. Tinsworth,
Director, Registration Division, Office of
Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.261 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.261(b) is amended by adding and alphabetically inserting the raw agricultural commodity crabapples, to read as follows:

§ 180.261 N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog; tolerances for residues.

(b) * * *

Commodities	Parts per million
Crabapples.....	20

[FR Doc. 88-18455 Filed 8-16-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3422-5]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located offshore of Los Angeles, California for the disposal of dredged material removed from the ports of Los Angeles, Long Beach and other nearby harbors or dredging sites. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredged material. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before September 16, 1988.

ADDRESSES: Send comments to: Dr. Wendy Wiltse, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

The file supporting this proposed designation is available for public inspection at the following locations:

1. EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC.
2. EPA Region IX, Library, 215 Fremont Street, San Francisco, CA.
3. Army Corps of Engineers, Los Angeles District, Library 300 North Los Angeles Street, Los Angeles, CA.

FOR FURTHER INFORMATION CONTACT: Dr. Wendy Wiltse at the above address, or call (415) 974-9812.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated the authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter 1, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2462 *et seq.*) and was last extended on August 24, 1984 (49 FR 33647 *et seq.*). That list established this site as an interim site. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations (39 FR 16186, May 7, 1974).

The EPA prepared a Draft EIS entitled Los Angeles/Long Beach (LA-2) Ocean Dredged Material Disposal Site Designation. On October 9, 1987, a notice of availability of the DEIS for public review and comment was published in the Federal Register (52 FR 37832, October 9, 1987). Anyone desiring a copy of the DEIS may obtain one from the address given above. The public comment period on this DEIS closed on December 22, 1987 after receipt of 14 comment letters.

The following substantive comments were discussed in the 14 comment letters:

1. Several commentors were concerned that designation of the site

would conflict with fisheries interests in the San Pedro Channel. EPA contacted fisheries resource agencies and local fishermen to determine the extent of benthic fishing effort in the vicinity of the disposal site. We determined that a trawl fishery does not exist in the area because there are too many snags on the bottom to tow a net; and the developing trap fishery for prawns is restricted to rocky locations. Pelagic fisheries will not be affected by dredged material disposal.

2. Some commentors requested that the disposal site be moved to deeper water. EPA evaluated a specific location 11 nautical miles from the Palos Verdes Peninsula in 470 fathoms of water. We determined that this site, within the San Pedro Basin, was not acceptable because the basin has very low dissolved oxygen levels. Disposal of dredged material in this environment may produce anoxic conditions in the basin which could adversely affect the benthic communities. Designation of the deeper site would also cause the disposed material to be spread over a much greater area than the LA-2 site.

3. One commentor requested that the site management program be included in the FEIS. The section on site monitoring was expanded to cover the guidance provided in the Ocean Dumping Regulations (49 CFR 228.13). Site management programs will be defined at the national level of EPA and the Corps as agreed to in the EPA/Corps National Memorandum of Understanding on ocean dumping. Region 9 and the Corps' Los Angeles District will prepare a detailed site management program and circulate the proposal for public review, subsequently.

4. The question of relative costs of disposal at LA-2 versus the deep water site was raised. The Corps' Los Angeles District estimated that disposal at the deep water site would increase costs by 64%. Similar estimates were given by the Ports of Los Angeles and Long Beach. Cost of disposal operations is not a criterion for site selection and was not considered as a factor in the FEIS.

5. EPA was requested to evaluate the cumulative impacts of designating the LA-2 site. The impact tables contained in Chapter 4 Environmental Consequences were revised to reflect further analysis of cumulative impacts in that chapter. Endangered Species Act and National Historic Preservation Act coordination have been carried out as documented in Chapter 5 of the FEIS.

6. The last major comment focused on the toxicity of the dredged material disposed at LA-2. During the Corps' Ocean Dumping Permit process under

Section 103 of the MPRSA, EPA and the Corps review sediment test data and results of bioassays to determine whether the proposed dredged material is suitable for ocean disposal. Only dredged material which passes these tests are considered suitable for ocean disposal. Sediments that show significant toxicity, bioaccumulation of contaminants or abnormally high concentrations of contaminants are prohibited from ocean disposal. Alternative disposal methods must be used if the project is to proceed.

C. Alternatives Analysis

The action discussed in the FEIS is designation for continuing use of an ODMDS. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of specific ocean dredged material disposal permits is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The FEIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land-based disposal alternatives were examined in the DEIS and found to be unacceptable for disposal of large amounts of dredged material. This alternative will be evaluated by the Corps of Engineers, Los Angeles District on a case-by-case basis during the permitting process.

The following alternatives were evaluated in this FEIS:

1. No Action—This alternative would prevent final designation of the LA-2 site and prohibit further use of the ODMDS. No action would force the Corps to designate their own site under Section 103 of MPRSA, or modify or cancel dredging projects that rely on ocean disposal of suitable material.

2. Delayed Action Alternative—Delaying the designation of the LA-2 site would be a violation of the 1980 Consent Agreement between EPA and the National Wildlife Federation. The need for an ODMDS is a continuing concern and requires conclusion of the site designation process in the most expeditious manner possible.

3. Upland Disposal (including Landfilling in Port Areas and Disposal at Sanitary Landfills)—These alternatives are considered on a case-by-case basis when the Corps' permit applications are reviewed. Beach replenishment is preferred if the dredged material is suitable. Disposal of large amounts of dredged material at upland sites is not a feasible long-term solution for management of dredged material

disposal because the capacity of these sites is limited in the Los Angeles area.

4. **LA-2 ODMDS (Preferred Alternative)**—This site was selected as the preferred alternative because it has been used historically since the 1970's, it is between 65 and 170 fathoms and the environmental impacts at the site are acceptable. The anticipated use of the site will not cause significant environmental impacts if the site is designated and conflicts with other uses of the ocean are minimal.

5. **Shallow Water ODMDS**—This site would be located close to the Palos Verdes Peninsula near the Los Angeles County sewage outfall. Synergistic effects from the outfall, proximity to fishing and boating areas, kelp beds, cultural resources, navigation and shoreline process were issues evaluated in the FEIS.

6. **Deep Water ODMDS**—The deep water site is located 11 nautical miles off the Palos Verdes Peninsula in 470 fathoms of water. Major considerations include: the size of the area affected by disposal, potential for anoxic conditions in the deep basin, oil and gas development, and the feasibility of monitoring and surveillance at the site.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

D. Proposed Site Designation

The proposed site is located approximately 6 nautical miles offshore of the Los Angeles/Long Beach breakwater and occupies an area of about 2.39 square nautical miles. Water depths within the area are between 65 and 175 fathoms (118 and 320 meters). The coordinates of the site are as follows: 33°37'06" North x 118°17'24" West with a radius of 0.76 nautical miles. If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

E. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse

impacts at an early stage. Where feasible, locations off the continental shelf and historical sites are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6(a) lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed site, as discussed below under the eleven specific factors, is acceptable under the five general criteria. Historical use at the existing site has not resulted in substantially adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed site are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast* [40 CFR 228.6(a)(1)]. The LA-2 site is located approximately 6 nautical miles (11 kilometers) from shore on the continental slope leading to the San Pedro Basin at depths ranging from 65 to 175 fathoms (118–320 meters). The bottom, consisting of fine sediment, slopes to the west.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases* [40 CFR 228.6(a)(2)]. The LA-2 site provides feeding and breeding areas for common resident benthic species. Designation of the site will not affect any geographically limited habitats, breeding sites or critical areas that are essential to commercially important species or rare or endangered species.

3. *Location in relation to beaches and other amenity areas* [40 CFR 228.6(a)(3)]. The LA-2 site is 6 nautical miles from the nearest shoreline. EPA and the Corps have determined that visual impacts of plumes, transport of dredged material to any shoreline and alteration of any habitat of special biological significance or marine sanctuary will not occur if this site is designated.

The LA-2 site is approximately 1.2 nautical miles south of the southeastern tip of the study area defined under the Santa Monica Bay Restoration Project (SMBRP). SMBRP is part of EPA's National Estuary Program. The ODMDS and the study area are separated by a deep canyon. Any resuspended sediments from the San Pedro Shelf area are expected to either move into the

canyon or off the shelf into the San Pedro Basin. There should be minimal effect from LA-2 on the southeastern edge of Santa Monica Bay.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste if any* [40 CFR 228.6(a)(4)]. An annual average of approximately 200,000 cubic yards of predominantly silts and clays dredged from Los Angeles and Long Beach Harbors are expected to be disposed at the ODMDS once it is designated. The dredged material proposed for disposal at the site must pass stringent sediment chemistry and bioassay tests before a permit is issued by the Corps. Disposal will be from split hull barges towed by tugboat to the site. No dumping of toxic materials or other kinds of industrial or municipal wastes will be permitted at the site.

5. *Feasibility of surveillance and monitoring* [40 CFR 228.6(a)(5)]. The U.S. Coast Guard (USCG) will conduct spot surveillance of disposal activities at the site. EPA and the Corps will assist the USCG within the limits of their jurisdiction.

Physical and biological sampling will be key factors in the site monitoring program. The monitoring program will be established to answer several questions including: the area of impact and effects on grain size, sediment chemistry and benthic infauna; disposal model verification and sediment transport; potential for bioaccumulation of contaminants in local species; and potential impacts on commercial and recreational fisheries. If significantly adverse impacts are detected at the site, the site management plan will be flexible enough to allow for appropriate action.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any* [40 CFR 228.6(a)(6)]. Water currents in the vicinity of LA-2 are variable but move predominantly to the northwest and southeast along bathymetric contour lines. Vertical mixing and currents will disperse fine material disposed at the LA-2 site to the northwest or southeast. The main direction of sediment transport is from the continental shelf down the slope to the floor of deep basins. Dredged material reaching the bottom at LA-2 would be transported offshore and down the slope by currents and sediment slumping.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects)* [40

CFR 228.6(a)(7)]. LA-2 has been used as an interim site for disposal of dredged material since the late 1970's. Impacts of this disposal activity at LA-2 include a greater range of fine and coarse sediments that are poorly sorted; elevated concentrations of heavy metals, pesticides, and PCBs; and lower species diversity of demersal fish, benthic infauna and epifauna compared to the reference site. These effects are considered to be acceptable localized impacts. Impacts on the water column are minimal and temporary, associated with disposal events. The potential for cumulative effects with other discharges is considered to be small at LA-2 and will be assessed in future monitoring of impacts in the vicinity of LA-2.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean* [40 CFR 228.6(a)(8)]. Interference with shipping is minimal because of the low income of material to be discharged at LA-2 (200,000 cubic yards per year) and because the disposal site is located outside of the U.S. Coast Guard Precautionary Area and major traffic lanes. Impacts on commercial fishing are expected to be minor and temporary since most of the catch in the vicinity of LA-2 consists of pelagic species, and the impacts of dredged material disposal on the upper water column are intermittent and short-term. The strongest impacts of dredged material disposal are localized changes in the bottom community; no major bottom fisheries exist in the vicinity of LA-2. Sportfishing, pleasure boating, and dredged material disposal are presently coexisting at LA-2 and no changes are expected. Conflicts with future oil and gas development are possible, but can be mitigated.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys* [40 CFR 228.6(a)(9)]. Water quality at LA-2 is indistinguishable from the water quality of nearby areas. Sediment quality differs from a reference site in grain size distribution, and levels of heavy metals, pesticides, and PCBs. Species diversity of benthic epifauna, infauna, and demersal fish is lower at LA-2 than at the reference site, although many of the same species exist at both sites.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site* [40 CFR 228.6(a)(10)]. Opportunistic benthic species characteristic of disturbed conditions are expected to be present and

abundant at any ODMDS in response to physical deposition of sediments. *Capitella*, an opportunistic polychaete worm, does occur in high density at the LA-2 site. This worm is preyed upon by bottom-feeding fish and is not directly harmful to other species.

11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance* [40 CFR 228.6(a)(11)]. There are no known shipwrecks nor any known aboriginal artifacts in the vicinity of the LA-2 site.

F. Proposed Action

This FEIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation. The designation of the LA-2 site as an EPA approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region IX.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual ocean disposal of materials. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

This action will not result in an annual effect on the economy of \$100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Harry Seraydarian,

Acting Regional Administrator for Region IX.

In consideration of the foregoing, Subchapter H of Chapter 1 of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing paragraph (a)(1)(i)(E) Long Beach, CA and by removing from the Dredged Material Site listing in paragraph (a)(3) the entry for, Los Angeles, and by adding paragraph (b)(68) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * *

(b) * * *

(68) Los Angeles (LA-2) Ocean Dredged Material Disposal Site-Region IX.

Location: 33° 37' 06" N., 118° 17' 24" W. (0.76 nautical mile radius).

Size: 2.39 square nautical miles.

Depth: 65 to 175 fathoms (118 to 320 meters).

Primary Use: Ocean dredged material disposal.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material.

[FR Doc. 88-18584 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5450

[AA-230-08-6310-02]

Sales of Forest Products

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend provisions of the existing regulations in 43 CFR Part 5450, Award of Contract; General. The potential exists for Bureau of Land Management (BLM) timber sale contracts to be defaulted by purchasers who choose not to complete the contracts by their expiration dates. Such defaults create forest management problems and reduce timber revenues to the Federal Treasury and local governments. This proposed rulemaking would require additional

security from purchasers of new sales where the purchaser has defaulted on a past sale contract and has not paid or bonded for the damages associated with the defaulted sale. The increased security would reduce the Government's risk of non-performance by defaulters and increase the likelihood that all purchasers will complete their timber sale contracts on time. This proposed rule would supplement the existing pre-award qualification rule which requires the authorized officer of the BLM to determine whether the high bidder is qualified or responsible to perform the obligations of the contract. In addition to the authorized officer's existing duty to assess the high bidder's qualification in terms of having contractor status, financial capability, skill, and ability, this proposal will give the authorized officer the basis to deal with the high bidder's responsibility as demonstrated by performance on past contracts.

DATE: Comment period expires September 16, 1988. Comments received or postmarked after this date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Department of the Interior, Bureau of Land Management, 1800 "C" Street, NW., Room 5555 Main Interior Bldg., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Lyndon Werner, (202) 653-8864.

SUPPLEMENTARY INFORMATION: Current regulations at 43 CFR 5450.1(a) authorize the authorized officer to require a high bidder to provide such information as is necessary to determine the ability of the bidder to perform the obligations of the contract. The default of a past contractor(s) indicates that the purchaser may not be capable of meeting or may willfully disregard contractual obligations. Regardless of the cause, a likelihood of failure to perform new contractual obligations is unacceptable to the United States, and presents the need for additional security against such failure in appropriate circumstances.

Failure to perform or a default on Federal sale contracts impairs the land management ability of the Federal Government, reduces local and Federal government revenue, and affects other timber purchase companies. Reoffering defaulted timber sales interrupts the orderly offering of timber sales in the same vicinity by requiring the adjustment and repetition of actions already completed. Efficient reforestation is complicated by the uncertain timing associated with potential default and resale. The complications associated with the

determination of cumulative environmental impacts is increased because of the passage of time. The collection of receipts shared by the United States and local government is delayed and actual amounts collected may be reduced. The United States is placed in the uncertain position of not knowing whether the defaulter is either able or willing to complete other contracts.

Under law, defaulted timber sales sold prior to January 1, 1982, are reoffered for sale as part of rather than in addition to the normal timber sale program. This results in reduced inventories of timber held by timber purchasers, possible lower employment in local communities, and less revenue for country government due to reduced timber receipts. Also, due to the potential for the default process to be time consuming, the distribution of damage collection receipts could be delayed, and actual amounts collected and distributed could be reduced. In addition, defaulting rather than performing an expensive or difficult timber contract could place the defaulter in a better competitive position, compared to a competitor that has met its contractual obligations, when bidding on new timber sales, thus disrupting the bidding process.

Under the proposed rulemaking, a purchaser that has defaulted on a Federal timber sale contract, and has bid on another contract, would be required to establish bidder responsibility by paying or bonding or any combination of the two for any one of the following: (1) The total unpaid balance of the purchase price of all defaulted contracts, (2) the unsettled damages on all previous defaults, or (3) 50 percent of the purchase price of contracts bid after the default. Payment of 50 percent would increase the likelihood of performance on the new contract. The regulations at 43 CFR 5400.0-5(r) state that affiliates of the purchaser may be considered as the purchaser. Therefore, a default by an affiliate of the purchaser of a new timber sale could trigger additional bidder requirements for that purchaser. Additional requirements imposed by the provisions of this proposed rulemaking on the bidder in response to contract defaults would apply to all subsequent sales in which the bidder participates until he/she either pays or bonds for the payment of the remaining amount due on all defaulted sales or pay or bonds for the payment of damages created by all defaults.

The principal author of this proposed rulemaking is David Estola of the Branch of Forestry, Oregon State Office,

Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, Washington, DC.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Few timber companies are expected to default, and all members of the timber harvest community are treated equally.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 5450

Administrative practice and procedure, Forest and forest products, Public lands, Government contracts.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5450—AWARD OF CONTRACT

Subpart 5450—Award of Contract; General

1. The authority citation continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

2. Section 5450.1(b) is revised to read as follows:

§ 5450.1 Pre-award qualifications of high bidder.

* * * * *

(b) A purchaser who has defaulted on a timber sale contract under this title by failing to complete payment of its total purchase price by the expiration date of the contract is considered a risk for purposes of being awarded future timber sale contracts. If a purchaser deemed a risk is the high bidder on a new timber sale, the authorized officer shall send a notice by registered mail requiring such purchaser to establish bidder responsibility by paying or bonding, or a combination of the two for any one of

the following: (1) The total unpaid balance of the purchase price of all defaulted sales, (2) the unsettled damages on all defaults, or (3) 50 percent of the purchase price of contracts bid after the most recent default. Any payment applied toward 50 percent of a contract's bid price after the default(s) will be held as final payment for timber cut and/or removed under terms of the contracts. Acceptable bonding options are listed at § 5451.1 of this title. Payment and bonding are due within time limits stated in § 5450.1(c). Should the purchaser fail to demonstrate responsibility within 30 days of receipt of the notice, the authorized officer shall offer the contract for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract. Failure to demonstrate responsibility within 30 days of receipt of the notice indicates that the purchaser is not responsible, and debarment proceedings shall be considered under § 5441.1 of this title.

James E. Cason,

Acting Assistant Secretary of the Interior.

July 19, 1988.

[FR Doc. 88-18576 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6932]

Proposed Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency
Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:
John L. Matticks, Chief, Risk Studies

Division, Federal Insurance
Administration, Federal Emergency
Management Agency, Washington, DC
20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Kern County (unincorporated areas)	
<i>Caliente Creek:</i>	
At confluence of Indian Creek.....	*2,652
At confluence of Sand Canyon Creek.....	*2,765
Just downstream of an unnamed road connecting Rolling Oaks Road to Indian Spring Road.....	*3,089
Just downstream of Rolling Oaks Road.....	*3,165
At limit of detailed study located approximately 1,300 feet upstream of Rolling Oaks Road.....	*3,196
<i>Indian Creek:</i>	
Approximately 50 feet upstream of Caliente Creek Road.....	*2,667
Just downstream of first intersection with Indian Creek Road looking upstream.....	*2,744
By intersection of Hog Canyon Road and Indian Creek Road.....	*2,770
<i>Caliente Creek Tributary:</i>	
At confluence with Caliente Creek.....	*2,830
Approximately 1,400 feet downstream of County Road 5995.....	*2,915
Approximately 140 feet upstream of County Road 5995.....	*2,960
<i>Weaver Creek:</i>	
At confluence with Caliente Creek.....	*2,859
Approximately 200 feet downstream of the County Road 5995 Bridge.....	*3,013
<i>Horn Toad Hills Alluvial Fan:</i>	
At the intersection of Douglas Avenue and Koch Street.....	#1
Approximately 3,500 feet north of the intersection of Koch Street and Arroyo Avenue.....	#2
At the intersection of Arroyo Avenue and Rosewood Boulevard.....	#3
<i>Little Dixie Wash:</i>	
Approximately 150 feet upstream of U.S. Highway 395.....	*2,466
Just upstream of West Ridgecrest Boulevard.....	*2,495
Just downstream of Southern Pacific Railroad.....	*2,513
Approximately 50 feet downstream of Bowman Road.....	*2,538
4,300 feet upstream of Bowman Road.....	*2,566
Maps are available for review at the Kern County Planning Department, 1415 Truxton Avenue, Bakersfield, California.	
Send comments to The Honorable Roy Ashburn, Chairman, Kern County Board of Supervisors, 1415 Truxton Avenue, Room 601G, Bakersfield, California 93301.	
COLORADO	
DeBeque (town), Mesa County	
<i>Roan Creek:</i>	
Approximately 1,200 feet downstream of County Road 44.....	*4,909
Approximately 20 feet upstream of County Road 44.....	*4,913
Approximately 1,360 feet upstream of County Road 44.....	*4,918
Maps are available for review at Town Hall, 343 Minter Street, DeBeque, Colorado.	
Send comments to The Honorable James Lounds, Mayor, Town of DeBeque, Town Hall, 343 Minter Street, DeBeque, Colorado 81630.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Dolores (town), Montezuma County	
<i>Dolores River:</i>	
Approximately 2,100 feet downstream of down- stream edge of 4th Street Bridge.....	*6,924
Approximately 95 feet upstream of 8th Street, extended.....	*6,943
Approximately 1,950 feet upstream of 12th Street, extended.....	*6,961
Maps are available for review at Town Hall, 420 Central Avenue, Dolores, Colorado.	
Send comments to The Honorable James Koenig, Mayor, Town of Dolores, P.O. Box 630, 420 Central Avenue, Dolores, Colorado 81323.	
Georgetown (town), Clear Creek County	
<i>Clear Creek:</i>	
Entire shoreline of Georgetown Lake.....	*8,445
At 15th Street.....	*8,465
Approximately 70 feet downstream of footbridge.....	*8,480
Approximately 90 feet upstream of 7th Street.....	*8,508
Approximately 600 feet upstream of 6th Street.....	*8,539
Approximately 730 feet upstream of 3rd Street extended.....	*8,597
<i>South Clear Creek:</i>	
At confluence with Clear Creek.....	*8,490
Approximately 150 feet upstream of Main Street.....	*8,526
Approximately 300 feet upstream of Main Street.....	*8,536
Approximately 80 feet upstream of 3rd Street.....	*8,662
Maps are available for review at Town Hall, 404 Sixth Street, Georgetown, Colorado.	
Send comments to The Honorable Jerry Buckley, Mayor, Town of Georgetown, Town Hall, P.O. Box 426, Georgetown, Colorado 80444.	
Montezuma County (unincorporated areas)	
<i>Dolores River:</i>	
Approximately 1,200 feet upstream of State Highway 145.....	*6,924
Approximately 12,400 feet upstream of State Highway 145.....	*6,985
Approximately 7,900 feet downstream of confluence of Carver Canyon Creek.....	*7,044
Approximately 3,000 feet upstream of confluence of Carver Canyon Creek.....	*7,107
Approximately 4,300 feet upstream of Country Road 36.....	*7,169
Approximately 8,550 feet upstream of confluence of Spruce Water Canyon Creek.....	*7,232
Approximately 2,700 feet downstream of Four Corners Bridge.....	*7,293
Approximately 7,150 feet upstream of Four Corners Bridge.....	*7,350
Approximately 1,690 feet upstream of Private Road.....	*7,403
<i>West Dolores River:</i>	
Approximately 550 feet downstream of State Highway 145.....	*7,361
Approximately 715 feet upstream of State Highway 145.....	*7,372
Approximately 2,950 feet upstream of State Highway 145.....	*7,391
<i>Mancos River:</i>	
Approximately 3,350 feet downstream of Spruce Street.....	*6,911
Approximately 140 feet downstream of Spruce Street.....	*6,986
Approximately 1,225 feet upstream of Town of Mancos eastern corporate limits.....	*7,068
<i>Lost Canyon Creek:</i>	
Approximately 1,400 feet downstream of County Road 30.....	*6,925
Approximately 75 feet upstream of County Road 30.....	*6,932
Approximately 2,250 feet upstream of County Road 30.....	*6,943
<i>Chicken Creek:</i>	
Approximately 6,650 feet downstream of Drive- way Bridge.....	*6,928
Approximately 2,610 feet downstream of Drive- way Bridge.....	*6,970

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 1,250 feet upstream of Driveway Bridge.....	*7,004
Maps are available for review at the Montezuma County Courthouse, County Administrator's Office, 109 West Main Street, Cortez, Colorado.	
Send comments to The Honorable Robert L. Maynes, Chairman, Montezuma County Board of Commissioners, County Courthouse, 109 West Main Street, Room 302, Cortez, Colorado 81321.	
FLORIDA	
Cape Canaveral Port Authority, Brevard County	
<i>Atlantic Ocean/Canaveral Barge Canal:</i>	
At State Road 401.....	*7
About 3600 feet east of the intersection of South Jetty Drive and Herring Street.....	*14
<i>Banana River:</i>	
Just north of the intersection of Grouper Road and Cape Road.....	*3
Just north of the Cape Canaveral South gate entrance.....	*6
Maps available for inspection at the Cape Ca- naveral Port Authority Station Director's Office, 200 George King Boulevard, Cape Canaveral, Florida.	
Send comments to The Honorable Charles Row- land, Director, Cape Canaveral Port Authority, P.O. Box 267, Cape Canaveral, Florida 32920.	
Palm Shores (town), Brevard County	
<i>Indian River: Along shoreline.....</i>	*5
Maps available for inspection at the Mayor's Home, 5275 North Harbor Boulevard, Palm Shores, Florida.	
Send comments to The Honorable Paul Likar, Mayor, Town of Palm Shores, P.O. Box 360915, Melbourne, Florida 32936.	
GEORGIA	
Pierce County (unincorporated areas)	
<i>Alabama River:</i>	
About 0.8 mile upstream of mouth.....	*85
Just downstream of U.S. Route 82.....	*84
<i>Satilla River:</i>	
Just upstream of State Route 121.....	*71
At county boundary.....	*96
Maps available for inspection at the County Clerk's Office, County Courthouse, Blackshear, Georgia.	
Send comments to The Honorable Forrest W. Sweet, Chairman, Board of County Commis- sioners, Pierce County, P.O. Box 679, Blackshear, Georgia 31516.	
IDAHO	
McCall (city), Valley County	
<i>North Fork Payette River:</i>	
Approximately 1,450 feet downstream of West Lake Street/State Highway 55.....	*4,981
Approximately 880 feet downstream of West Lake Street/State Highway 55.....	*4,984
Maps are available for review at City Hall, 212 Park Street, McCall, Idaho.	
Send comments to The Honorable John J. Allen, Jr., Mayor, City of McCall, P.O. Box 721, McCall, Idaho 83638.	
ILLINOIS	
Hanover (village), Jo Daviess County	
<i>Apple River:</i>	
About 1.5 miles downstream of Hanover Dam.....	*618
About 0.8 mile upstream of Hanover Dam.....	*622
Maps available for inspection at the Clerk's Office, Village Hall, Hanover Illinois.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Send comments to The Honorable Donald Schable, Village President, Village of Hano- ver, Village Hall, Box 12, Hanover, Illinois 61041-0812.	
IOWA	
Clayton (city), Clayton County	
<i>Mississippi River:</i>	
At downstream corporate limits.....	*625
At upstream corporate limits.....	*626
Maps available for inspection at the City Hall, R.R. #2, Garnaville, Iowa.	
Send comments to The Honorable Arnold Schultz, Mayor, City of Clayton, City Hall, R.R. #2, Gar- naville, Iowa 52409.	
KANSAS	
Ellsworth (city), Ellsworth County	
<i>Smoky Hill River:</i>	
About 250 feet upstream of U.S. Highway 156.....	*1,533
Just downstream of Burlington Northern railroad.....	*1,539
<i>K-14 Tributary:</i>	
Just upstream of 8th Street.....	*1,546
Just downstream of Douglas Avenue (upstream crossing).....	*1,562
Shallow Flooding (overflow from K-14 Tributary): Within community.....	#2
Maps available for inspection at the City Offices, Ellsworth, Kansas.	
Send comments to The Honorable Robert S. Homolka, Mayor, City of Ellsworth, P.O. Box 163, Ellsworth, Kansas 67439.	
KENTUCKY	
Nicholasville (city), Jessamine County	
<i>Town Fork:</i>	
About 950 feet downstream of John C. Watts Drive.....	*895
Just downstream of John C. Watts Drive.....	*895
Just upstream of John C. Watts Drive.....	*904
Just downstream of Norfolk Southern Railway.....	*941
Just upstream of Norfolk Southern Railway.....	*947
About 4250 feet upstream of Brookview Drive.....	*983
Maps available for inspection at the City Hall, 517 North Main Street, Nicholasville, Kentucky.	
Send comments to The Honorable James Mayson, Mayor, City of Nicholasville, P.O. Box 158, Nicholasville, Kentucky 40356.	
MAINE	
China (town), Kennebec County	
<i>West Branch Sheepscot River:</i>	
Approximately .6 mile upstream of corporate limits.....	*209
Approximately 540 feet upstream of Weeks Mills Road.....	*217
<i>Meadow Brook:</i>	
Approximately 1,000 feet downstream of Tobey Road.....	*300
Approximately 100 feet upstream of Dingo Road.....	*320
Maps available for inspection at the Town Manager's Vault, South China, Maine.	
Send comments to The Honorable Hugh Kia- jewski, Manager of the Town of China, Kenne- bec County, R.R. #1, Box 970, South China, Maine 04358.	
Kingfield (town), Franklin County	
<i>Carrabassett River:</i>	
At downstream corporate limits.....	*536
Approximately 1.8 miles upstream of confluence of West Branch Carrabassett River.....	*601
<i>West Branch Carrabassett River:</i>	
At confluence with the Carrabassett River.....	*569
Approximately 2 miles upstream of confluence with Carrabassett River.....	*574

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Town Clerk's Safe, Kingfield, Maine.	
Send comments to The Honorable Lois L. Gould, Chairman of the Town of Kingfield Board of Selectmen, Franklin County, P.O. Box 1585, Kingsfield, Maine 04947.	
Owls Head (town), Knox County	
<i>Rockland Harbor:</i>	
At Broad Cove.....	*13
At Coopers Beach.....	*15
At Ocean Avenue.....	*16
At Battery Point.....	*16
<i>Owls Head Bay:</i>	
At Main Street.....	*13
At Ginn Point.....	*17
Shoreline at Lighthouse Road extended.....	*18
<i>Muscle Ridge Channel:</i>	
At Ash Point Drive extended.....	*14
At Otter Point.....	*14
At Ash Point.....	*17
<i>Ballynac Cove:</i> At Dublin Road.....	*10
Maps available for inspection at the Municipal Building, Star Route 32, Owls Head, Maine.	
Send comments to The Honorable Jack Rausch, Chairman of the Town of Owls Head Planning Board, Knox County, Star Route 32, Box 176, Owls Head, Maine 04854.	
South Thomaston (town), Knox County	
<i>Atlantic Ocean:</i>	
Shoreline along Seal Harbor.....	*11
Shoreline along Waterman Point.....	*13
Southeastern shoreline of Burnt Island.....	*28
<i>Weskeag River:</i> Entire length within corporate limits.....	*10
<i>St. George River:</i> Entire length within corporate limits.....	*11
Maps available for inspection at the Town Office, South Thomaston, Maine.	
Send comments to The Honorable Nancy Pomroy-Stone, Chairman of the Town of South Thomaston Planning Board, Knox County, H.C.R. 33, P.O. Box 418, South Thomaston, Maine 04858.	
MINNESOTA	
Bigfork (city), Itasca County	
<i>Big Fork River:</i>	
About 1.31 miles downstream of the confluence of Rice River.....	*1,305
About 0.78 mile upstream from Cedar Street.....	*1,307
<i>Rice River:</i>	
At mouth.....	*1,306
About 800 feet upstream of Cemetery Road.....	*1,306
Maps available for inspection at the City Hall, Bigfork, Minnesota.	
Send comments to The Honorable Chris Johnson, Mayor, City of Bigfork, City Hall, Bigfork, Minnesota 56628.	
Isanti (city), Isanti County	
<i>Rum River:</i>	
About 2,450 feet downstream of the confluence of Spirit Brook.....	*911
About 900 feet upstream of Wagon Road.....	*911
<i>Spirit Brook:</i>	
At mouth.....	*911
Just downstream of Whiskey Road.....	*911
About 800 feet upstream of Fifth Avenue.....	*923
<i>Park Brook:</i>	
At mouth.....	*923
Just downstream of Wagon Road.....	*927
Just upstream of Wagon Road.....	*932
About 1400 feet upstream of Third Avenue.....	*935
Maps available for inspection at the City Hall, Isanti, Minnesota.	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Send comments to The Honorable Randy Polzin, Mayor, City of Isanti, City Hall, Isanti, Minnesota 55040.	
MISSOURI	
Dunklin County (unincorporated areas)	
<i>Ditch No. 1:</i>	
Approximately 0.5 mile downstream of U.S. Highway 62.....	*280
Approximately 0.9 mile upstream of Broadwater Road.....	*283
<i>Ditch No. 1 Tributary A:</i>	
At downstream County boundary.....	*283
Approximately 50 feet upstream of St. Louis—Southwestern Railroad.....	*288
<i>Ditch No. 1 Tributary B:</i>	
At downstream County boundary.....	*284
Approximately 25 feet upstream of St. Louis—Southwestern Railroad.....	*289
<i>Ditch No. 14:</i>	
Approximately 1.1 miles downstream of Route J.....	*287
Approximately 0.3 mile upstream of Bernard Road.....	*288
<i>Shipley Slough:</i>	
Approximately 0.4 mile downstream of St. Louis—San Francisco Railroad.....	*281
At Ely Street.....	*261
<i>Kinnemore Slough Ditch:</i>	
Approximately 675 feet downstream of State Route 25.....	*245
Approximately 0.8 mile upstream of St. Louis—Southwestern Railroad.....	*246
<i>Honey Cypress Creek:</i>	
Approximately 1.27 miles downstream of State Route 164.....	*242
Approximately 3.1 miles upstream of St. Louis—Southwestern Railroad.....	*246
Maps available for inspection at the Dunklin County Courthouse, Kennett, Missouri.	
Send comments to The Honorable Van Hawkins, Jr., Presiding Commissioner of Dunklin County, P.O. Box 188, Kennett, Missouri 63857.	
NEW HAMPSHIRE	
Greenland (town), Rockingham County	
<i>Pickering Brook:</i>	
Approximately 1,260 feet downstream of State Route 151.....	*7
At upstream corporate limits.....	*27
<i>Great Bay:</i> Entire shoreline within community including Winnicut River up to dam near State Route 101.....	*7
Maps available for inspection at the Town Office, 575 Portsmouth Avenue, Greenland, New Hampshire.	
Send comments to The Honorable Richard Rugg, Chairman of the Town of Greenland Board of Selectmen, Rockingham County, Town Office, 575 Portsmouth Avenue, Greenland, New Hampshire 03840.	
Stratham (town), Rockingham County	
<i>Squamscott River:</i> Entire reach of stream within corporate limits.....	*8
Maps available for inspection at the Stratham Town Office, Route 101, Stratham, New Hampshire.	
Send comments to The Honorable Martin Wool, Chairman of the Town of Stratham Board of Selectmen, Rockingham County, P.O. Box 115, Stratham, New Hampshire 03885.	
Wolfeboro (town), Carroll County	
<i>Lake Wentworth:</i> Entire shoreline within corporate limits.....	*536
<i>Rust Pond:</i> Entire shoreline within corporate limits.....	*580
<i>Lake Winnepesaukee:</i> Entire shoreline within corporate limits.....	*506

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
<i>Crescent Lakes:</i> Entire shoreline within corporate limits.....	
Maps available for inspection at the Town Office, Maine Street, Wolfeboro, New Hampshire.	
Send comments to the Honorable Shirley E. Ganem, Chairman of the Town of Wolfeboro Board of Selectmen, Carroll County, P.O. Box 629, Wolfeboro, New Hampshire 03894.	
NEW YORK	
Verona (town), Oneida County	
<i>Fish Creek (flooding affecting Wood Creek):</i>	
At Cove Road along Wood Creek.....	*375
At County Road 50A along Wood Creek.....	*378
At Kilts Road along Wood Creek.....	*380
Approximately 0.9 mile north of the intersection of Wood Creek Road and Lock Road (extended).....	*387
<i>Oneida Creek:</i>	
Confluence with Oneida Lake.....	*373
Approximately 1.7 miles upstream of State Route 13.....	*377
Approximately .60 mile downstream of State Route 13.....	*379
At State Route 31.....	*381
Approximately 350 feet upstream of State Route 13.....	*382
Approximately .50 mile upstream of State Route 13.....	*384
Downstream side of Swallow Road.....	*395
Upstream side of Swallow Road.....	*397
Approximately 1.4 miles upstream of Swallow Road.....	*399
Approximately 1.7 miles upstream of Swallow Road.....	*402
Approximately 2.2 miles upstream of Swallow Road.....	*403
Approximately 1.9 miles downstream of New York State Barge Canal.....	*409
Downstream side of New York State Barge Canal.....	*415
Upstream side of New York State Barge Canal.....	*418
Upstream side of County Road 89 (Oneida Street).....	*419
Approximately 0.2 mile upstream of Oneida Street.....	*419
Approximately .60 mile downstream of Interstate Route 90.....	*420
At downstream side of CONRAIL track.....	*422
Approximately 400 feet upstream of CONRAIL track.....	*423
Approximately 0.3 mile downstream of Sconodoo Street.....	*425
At downstream side of Sconodoo Street.....	*426
Approximately 800 feet upstream of Sconodoo Street.....	*426
<i>Sconodoo Creek:</i>	
Approximately 500 feet upstream of confluence with Oneida Creek.....	*426
Approximately 1,100 feet downstream of upstream corporate limits.....	*428
At upstream corporate limits.....	*433
Maps available for inspection at the Town Office Building, Durhamville, New York.	
The Honorable Maurice O. Deeley, Supervisor of the Town of Verona, Oneida County, R.D. 1, Box 249, Durhamville, New York 13054.	
Western (town), Oneida County	
<i>Mohawk River:</i>	
At confluence of Delta Reservoir.....	*555
Approximately 1,440 feet upstream of Hillside Road.....	*662
<i>Lensing Kill:</i>	
At confluence with the Mohawk River.....	*649
At upstream corporate limits.....	*750
<i>Wells Creek:</i>	
At confluence with the Mohawk River.....	*579
At confluence of Gifford Creek.....	*615
<i>Big Brook:</i>	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
At confluence of Gifford Creek.....	*615	About 400 feet downstream of Conrail.....	*769	Approximately 6.6 miles upstream of River Mile 195.3.....	*1,104
At upstream corporate limits.....	*748	About 1.1 miles upstream of State Route 664.....	*902	<i>Crooked Bridge Creek:</i>	
<i>Beaver Meadow Brook:</i>		<i>Tributary A:</i>		Approximately 1,800 feet downstream of State Route 74.....	*1,096
At confluence with Big Brook.....	*685	Confluence with Rush Creek.....	*772	Approximately .5 mile upstream of State Route 746.....	*1,198
Approximately 680 feet downstream of Gilett Road.....	*702	<i>Tributary B:</i>		<i>Goldsby Creek:</i>	
<i>Dunn Brook:</i>		Confluence with Rush Creek.....	*773	At Interstate Route 35.....	*1,121
At confluence with Lansing Kill.....	*714	Just downstream of Paradise Road.....	*791	Approximately .9 mile upstream of State Route 74.....	*1,182
Approximately 1,225 feet upstream of State Route 46.....	*787	<i>Baltimore Tributary:</i>		Maps available for inspection at the Town Hall, Route 1, Washington, Oklahoma.	
Maps available for inspection at the Town Supervisor's residence, 9201 Mullen Hill Road, Ava, New York.		Just upstream of Conrail.....	*852	Send comments to The Honorable Gene McPherson, Mayor of the Town of Goldsby, McClain County, Route 1, Box 54, Washington, Oklahoma 73093.	
Send comments to The Honorable Edwin C. Rapke, Supervisor of the Town of Western, Oneida County, 9201 Mullen Hill Road, Ava, New York 13303.		Just downstream of Roley Road.....	*869		
		<i>Raccoon Run:</i>			
		Just upstream of State Route 664.....	*799		
		Just downstream of Schiwick Road.....	*837		
		Just upstream of Conrail, about 100 feet upstream of Schiwick Road.....	*842		
		Just downstream of State Route 37.....	*848		
		<i>Turkey Run:</i>			
		About 5600 feet downstream of Bethel Road.....	*788		
		About 2600 feet upstream of Bethel Road.....	*800		
		<i>Tributary H:</i>			
		Confluence with Little Rush Creek.....	*867		
		Just downstream of Lake Road.....	*901		
		<i>Tributary I:</i>			
		Confluence with Raccoon Run.....	*798		
		Just downstream of State Route 37.....	*826		
		<i>Hunters Run:</i>			
		Just upstream of U.S. Route 22 at City of Lancaster corporate limits.....	*834		
		Just downstream of Crumley Road.....	*879		
		Just upstream of Crumley Road.....	*885		
		About 400 feet upstream of a Private Drive which is an extension of Whiley Road.....	*926		
		<i>Pleasant Run:</i>			
		Confluence with Hocking River.....	*790		
		About 1300 feet upstream of Beatty Road.....	*918		
		<i>Pleasant Run Lateral:</i> Confluence with Pleasant Run just downstream of Duffy Road.....	*829		
		<i>Ewing Run:</i>			
		About 4400 feet downstream of Rainbow Drive.....	*873		
		About 1600 feet upstream of confluence of Ewing Run Lateral.....	*917		
		<i>Fellers Run:</i>			
		About 1.5 miles downstream of State Route 37.....	*835		
		About 3400 feet upstream of Rainbow Drive.....	*907		
		<i>Ohio Canal:</i>			
		Just upstream of Chessie System.....	*832		
		Just upstream of confluence of Lateral A.....	*842		
		<i>Lateral A:</i>			
		Confluence with Ohio Canal.....	*842		
		About 200 feet upstream of Farm Lane.....	*884		
		<i>Lateral B:</i>			
		Confluence with Ohio Canal.....	*841		
		Just downstream of Upper Hocking Watershed Structure #6.....	*842		
		Just upstream of Upper Hocking Watershed Structure #6.....	*849		
		Just downstream of Coonpath Road.....	*853		
		<i>Lateral C:</i>			
		Confluence with Ohio Canal.....	*834		
		About 6100 feet upstream of U.S. Route 39.....	*862		
		<i>Lateral D:</i>			
		About 2000 feet downstream of Wilson Road.....	*848		
		About 1400 feet upstream of Farm Lane.....	*882		
		<i>Blue Valley Lateral:</i>			
		Confluence with Hocking River.....	*772		
		About 4500 feet upstream of Farm Lane.....	*798		
		<i>Blacklick Creek:</i>			
		At county boundary.....	*796		
		About 1800 feet upstream of Interstate 70.....	*836		
		Maps available for inspection at the County Regional Planning Commission, County Courthouse, Lancaster, Ohio.			
		Send comments to The Honorable Steven Goody, President, Board of County Commissioners, Fairfield County, County Courthouse, Lancaster, Ohio 43130.			
		OKLAHOMA			
		Goldsby (town), McClain County			
		<i>Canadian River:</i>			
		Approximately 1.9 miles upstream of River mile 195.3.....	*1,064		

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 520 feet upstream of Prairie Road (at eastern corporate limits)	*2861
Maps are available for review at City Hall, Mitchell, Oregon.	
Send comments to The Honorable Kent Powell, Mayor, City of Mitchell, P.O. Box 66, Mitchell, Oregon 97750.	
Wasco (city), Sherman County	
Spanish Hollow Creek:	
Approximately 2,500 feet downstream of Church Street (at northern corporate limits)	*1187
Approximately 25 feet upstream of Church Street	*1231
Just downstream of Davis Street	*1269
Just upstream of McPhearsen Street	*1281
At eastern corporate limits	*1306
Maps are available for review at City Hall, 1004 Clark Street, Wasco, Oregon.	
Send comments to The Honorable Elaine Kalista, P.O. Box 26, Wasco, Oregon 97065.	
PENNSYLVANIA	
Adams (township), Butler County	
Breakneck Creek:	
At downstream corporate limits	*959
At Township Route 391	*1,021
At upstream corporate limits	*1,057
Maps available for inspection at the Township Building, 75 Hutchman Road, Mars, Pennsylvania.	
Send comments to The Honorable Don Aiken, Chairman of the Township of Adams Board of Supervisors, Butler County, P.O. Box 424, Mars, Pennsylvania 16046.	
Auburn (borough), Schuylkill County	
Bear Creek:	
At confluence with the Schuylkill River	*449
At upstream corporate limits	*472
Maps available for inspection at Ms. Brenda Fessler's residence, 112 Orchard Street, Auburn, Pennsylvania.	
Send comments to The Honorable John Reedy, President of the Borough of Auburn Council, Schuylkill County, Borough Hall, P.O. Box 89, Auburn, Pennsylvania 17922.	
Gallery (borough), Butler County	
Breakneck Creek:	
At downstream corporate limits	*959
At upstream corporate limits	*969
Maps available for inspection at the Borough Office, Main Street, Gallery, Pennsylvania.	
Send comments to The Honorable Paul S. Fulmer, President of the Gallery Borough Council, Butler County, Main Street, Gallery, Pennsylvania 16024.	
Cass (township), Schuylkill County	
West Branch Schuylkill River:	
At downstream corporate limits	*702
Approximately 1,200 feet upstream side of Access Road	*966
Maps Available for inspection at the Cass Township Office, Minersville, Pennsylvania.	
Send comments to The Honorable Joseph Mar-punas, Chairman of the Township of Cass Council, Schuylkill County, P.O. Box 114, Minersville, Pennsylvania 17954.	
Clifford (township), Susquehanna County	
East Branch Tunkhannock Creek:	
Downstream corporate limits	*990

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 1 mile upstream from confluence with Dundaff Creek	*1,082
Dundaff Creek:	
Confluence with East Branch Tunkhannock Creek	*1,052
Upstream corporate limits	*1,110
Maps available for inspection at the residence of Mary T. Lewis, Clifford Township Secretary, Box 339, Clifford, Pennsylvania.	
Send comments to The Honorable Vincent Halsey, Chairman of the Township of Clifford Board of Supervisors, Susquehanna County, Clifford, Pennsylvania 18413.	
Evans City (borough), Butler County	
Breakneck Creek:	
Approximately 160 feet downstream of the downstream corporate limits	*927
Approximately 0.5 mile upstream of the upstream corporate limits	*948
Maps available for inspection at the Borough Building, 220 Wahl Avenue, Evans City, Pennsylvania.	
Send comments to The Honorable Gene Pressau, President of the Borough of Evans City Council, Butler County, Jefferson Street, Evans City, Pennsylvania 16033.	
Franklin (township), Susquehanna County	
Snake Creek:	
At downstream corporate limits	*1,068
Approximately 0.4 miles upstream of T-683	*1,118
Maps available for inspection at the Township Building, Franklin, Pennsylvania.	
Send comments to The Honorable Bob Darrow, Chairman of the Township of Franklin Board of Supervisors, Susquehanna County, Box 259, R.D. 3, Montrose, Pennsylvania 18801.	
Greenwood (township), Columbia County, Pennsylvania	
Little Fishing Creek:	
At downstream corporate limits	*580
Approximately 950 feet downstream of L.R. 19054	*655
Approximately 0.3 mile upstream of State Route 42	*712
Green Creek:	
At confluence of Little Green Creek	*623
Approximately 350 feet upstream of T-599	*673
Maps available for inspection at the Greenwood Township Building, right off Pennsylvania Route 254, Millville, Pennsylvania.	
Send comments to The Honorable Edward Gregorowicz, Chairman of the Township of Greenwood Board of Supervisors, Columbia County, R.D. #3, Benton, Pennsylvania 17814.	
Harmony (borough), Butler County	
Connoquenessing Creek:	
Approximately .6 mile downstream of downstream corporate limits	*906
Approximately .12 mile upstream of upstream corporate limits	*909
Maps available for inspection at 217 Mercer Street, Harmony, Pennsylvania.	
Send comments to The Honorable C. W. Beighey, President of the Borough of Harmony Council, Butler County, 128 N. Pittsburgh Street, Zelenople, Pennsylvania 16063.	
Hop Bottom (borough), Susquehanna County	
Martins Creek:	
At downstream corporate limits	*840
At upstream corporate limits	*870

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Hop Bottom Borough Building, Forrest Street, Hop Bottom, Pennsylvania 18824.	
Send comments to The Honorable Ronald Baran-kovich, President of the Hop Bottom Borough Council, Susquehanna County, R.D. 1, Hop Bottom, Pennsylvania 18824.	
Jessup (township), Susquehanna County	
East Branch Wyalusing Creek:	
Approximately 1.6 miles downstream of T-318	*1,005
Downstream side of State Route 706	*1,080
Approximately 1.2 miles upstream of LR 57009	*1,150
Approximately 0.7 mile upstream of T-684	*1,186
Send comments to the home of the Township Secretary, Ralph Bunnell, R.D. 5, Box 234, Montrose, Pennsylvania.	
The Honorable Bruce K. Griffis, Chairman of the Township of Jessup Board of Supervisors, Susquehanna County, R.D. 5, Montrose, Pennsylvania 18801.	
Lehman (township), Pike County	
Saw Creek:	
Approximately 160 feet downstream of Winona Falls Road (T-301)	*435
At upstream side of dam	*475
Approximately 720 feet upstream of Stoney Hollow Drive	*482
Maps available for inspection at the Township Municipal Building, Lehman, Pennsylvania.	
Send comments to The Honorable Walter Bensley, Chairman of the Township of Lehman Board of Supervisors, Pike County, R.D. 1, Box 268, Bushkill, Pennsylvania 18324.	
Liberty (township), Susquehanna County	
Snake Creek:	
Approximately .35 mile downstream from T-798	*989
Upstream corporate limits	*1,068
Maps available for inspection at the Chairman of the Board of Supervisors' home, Box 149, R.D. 1, Hallstead, Pennsylvania.	
Send comments to The Honorable Dewey Lyon, Chairman of the Township of Liberty Board of Supervisors, Susquehanna County, Box 149, R.D. 1, Hallstead, Pennsylvania 18822.	
Lathrop (township), Susquehanna County	
Martins Creek:	
Approximately 200 feet downstream from the downstream corporate limits	*762
Approximately 300 feet upstream from T-377	*804
At upstream corporate limits	*889
Maps available for inspection at R.D. 1, c/o James Pratt, Box 158A, Hop Bottom, Pennsylvania.	
Send comments to The Honorable Elwood Phelps, Chairman of the Township of Lathrop Board of Supervisors, Susquehanna County, R.D. 1, Hop Bottom, Pennsylvania 18824.	
Lenox (township), Susquehanna County	
East Branch Tunkhannock Creek:	
Approximately .7 mile upstream of Interstate Route 81	*964
Upstream corporate limits	*991
Maps available for inspection at Box 36, c/o Edward Pietryk, Lenoxville, Pennsylvania.	
Send comments to The Honorable Edward Pietryk, Chairman of the Township of Lenox Board of Supervisors, Susquehanna County, Box 36, Lenoxville, Pennsylvania 18441.	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)
Mars (borough), Butler County	
<i>Breakneck Creek:</i>	
Approximately 40 feet downstream of the down- stream corporate limits.....	*1,007
At the upstream corporate limits.....	*1,021
Maps available for inspection at the Borough Building, Spring Street, Mars, Pennsylvania.	
Send comments to The Honorable Russell Merri- man, President of the Borough of Mars Council, Butler County, Garfield Avenue, Mars, Pennsylv- ania 16046.	
New Milford (township), Susquehanna County	
<i>Salt Lick Creek:</i>	
Downstream corporate limits.....	*990
4 mile upstream of L.R. 57062.....	*1,276
Maps available for inspection at the Township Building, New Milford, Pennsylvania.	
Send comments to The Honorable Richard Hol- brook, Chairman of the Township of New Mil- ford Board of Supervisors, Susquehanna County, New Milford, Pennsylvania 18834.	
Penn (township), Butler County	
<i>Connoquenessing Creek:</i>	
At downstream corporate limits.....	*969
At upstream corporate limits.....	*978
Maps available for inspection at the Township Building, 6495 Old Plank Road, Butler, Pennsylv- ania.	
Send comments to The Honorable Arthur W. Percy, Chairman of the Township of Penn Board of Supervisors, Butler County, 106 Weck- erly Road, Butler, Pennsylvania 16001.	
Pine (township), Columbia County	
<i>Little Fishing Creek:</i>	
At downstream corporate limits.....	*632
Approximately 1,500 feet upstream of State Highway 42.....	*712
Maps available for inspection at Mr. Roger Gordner's residence, beside the Township Building, on Township Road #750, Millville, Pennsylvania.	
Send comments to The Honorable Roger Gordner, Chairman of the Township of Pine Board of Supervisors, Columbia County, R.D. #1, Box 144, Millville, Pennsylvania 17848.	
Vanencia (borough), Butler County	
<i>Breakneck Creek:</i>	
At downstream corporate limits.....	*1,057
Approximately 230 feet upstream of the up- stream corporate limits.....	*1,069
Maps available for inspection at the Borough Building, Almira Street, Valencia, Pennsylvania.	
Send comments to The Honorable Fred Preik, President of the Borough of Valencia Council, Butler County, Three Degree Road, Valencia, Pennsylvania 16059.	
York (township), York County	
<i>South Branch Codorus Creek:</i>	
At downstream corporate limits.....	*390
At the confluence of East Branch Codorus Creek (Lower Reach).....	*417
<i>East Branch Codorus Creek (Lower Reach):</i>	
At the confluence with South Branch Codorus Creek.....	*417
Approximately 0.93 mile upstream of the con- fluence with South Branch Codorus Creek.....	*420
<i>East Branch Codorus Creek (Upper Reach):</i>	
At confluence with Lake Redman.....	*495
At the confluence of Barshinger Creek.....	*518
<i>Barshinger Creek:</i>	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)
At the confluence of East Branch Codorus Creek (Upper Branch).....	*518
Approximately 70 feet upstream of Arbor Drive ...	*680
<i>Inner Creek:</i>	
Approximately 250 feet upstream of the con- fluence with East Branch Codorus Creek.....	*495
Approximately .34 mile upstream of Lioner's Creek Road.....	*632
<i>Tributary #1:</i>	
At the confluence with Barshinger Creek.....	*587
Approximately 130 feet upstream of Stine Hill Road.....	*661
<i>Tyler Run:</i>	
At corporate limits.....	*478
Approximately 0.23 mile upstream of Kirch Road.....	*608
<i>Mill Creek:</i>	
At downstream corporate limits.....	*457
Approximately 0.27 mile upstream of Locust Street.....	*754
<i>Tributary #2:</i>	
At the confluence with Mill Creek.....	*475
Approximately 75 feet upstream of Oak Road.....	*623
<i>Tributary #3:</i>	
At confluence with Tributary #2.....	*495
Approximately .50 mile upstream of Springwood Road.....	*589
Maps available for inspection at the Township Building, 76 Revere Road, York, Pennsylvania.	
Send comments to The Honorable Robert Jacobs, Chairman of the Township of York, York County, 76 Revere Road, York, Pennsylvania 17402.	
Texas	
City of Denver City, Yoakum County	
<i>Playa P-3A:</i>	
At intersection of West Fir Street and South Avenue F.....	*3,554
At upstream corporate limits.....	*3,559
<i>Playa P-4-P-1-A:</i>	
At downstream (northwest) corporate limits.....	*3,572
Approximately 0.5 mile upstream of Main Avenue.....	*3,585
Maps available for inspection at the City Hall, Denver City, Texas.	
Send comments to The Honorable Lloyd Landers, Mayor of the City of Denver City, Yoakum County, P.O. Box J, City Hall, 3rd & Main, Denver City, Texas 79323.	
Plainview (City), Hale County	
<i>Running Water Draw:</i>	
At downstream corporate limits.....	*3,346
At upstream corporate limits.....	*3,378
<i>Tributary A:</i>	
Approximately 1,550 feet upstream of corporate limits.....	*3,378
At upstream corporate limits.....	*3,382
<i>Tributary to Running Water Draw:</i>	
At confluence with Running Water Draw.....	*3,364
Approximately 1,850 feet upstream of corporate limits at Playa C.....	*3,380
<i>Playa F2:</i> Entire area within corporate limits.....	*3,386
Maps available for inspection at the Municipal Building, 901 Broadway, Plainview, Texas.	
Send comments to The Honorable Earl V. Ridle- huber, Mayor of the City of Plainview, Hale County, 901 Broadway, Plainview, Texas 79073.	
Wellington (city), Collingsworth County	
<i>Wellington Tributary No. 1:</i>	
Approximately 200 feet upstream of Houston Street.....	*2,034
Approximately 1,200 feet upstream of Houston Street.....	*2,037
Maps available for inspection at the City Hall, Wellington, Texas.	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)
Send comments to The Honorable Milburn Derry- berry, Mayor of the City of Wellington, Collings- worth County, P.O. Box 949, Wellington, Texas 79095.	
VIRGINIA	
Madison County (unincorporated areas)	
<i>Hughes River:</i>	
At State Route 231.....	*622
Downstream side of most downstream crossing of State Route 707.....	*692
Approximately 1,580 feet downstream of State Route 681.....	*770
Approximately 1,580 feet upstream of State Route 681.....	*808
<i>Rose River:</i>	
At confluence with Robinson River.....	*602
Approximately 1.1 miles upstream of confluence with Robinson River.....	*675
Approximately 1.8 miles upstream of confluence with Robinson River.....	*750
Approximately 2.7 miles upstream of confluence with Robinson River.....	*825
Approximately 3.4 miles upstream of confluence with Robinson River.....	*900
Approximately 3.9 miles upstream of confluence with Robinson River.....	*975
Approximately 4.2 miles upstream of confluence with Robinson River.....	*1,050
Approximately 4.4 miles upstream of confluence with Robinson River.....	*1,077
<i>Robinson River (Lower Reach):</i>	
At USGS gage 01666500.....	*310
Approximately 1.8 miles upstream of USGS gage 01666500.....	*317
<i>Robinson River (Upper Reach):</i>	
Approximately 0.6 mile downstream of State Route 231.....	*482
Approximately 1.6 miles downstream of State Route 231.....	*555
Approximately 0.6 mile downstream of State Route 570.....	*630
Approximately 150 feet upstream of State Route 643.....	*690
Approximately 7.1 miles upstream of State Route 231.....	*770
Approximately 8.0 miles upstream of State Route 231.....	*845
Approximately 2,100 feet downstream of State Route 600.....	*920
Approximately 1,300 feet upstream of State Route 600.....	*995
Approximately 0.8 mile upstream of State Route 600.....	*1,070
Approximately 1.0 mile upstream of State Route 600.....	*1,127
Maps available for inspection at the County Administrator's Office, County Courthouse, Madison, Virginia.	
Send comments to The Honorable Stephen L. Utz, Madison County Administrator, P.O. Box 705, Madison, Virginia 22727.	
WEST VIRGINIA	
Ceredo (town), Wayne County	
<i>Ohio River:</i>	
Downstream corporate limits.....	*551
At confluence of Twelvepole Creek.....	*552
<i>Twelvepole Creek:</i> Entire length within community...	*552
<i>Jordan's Branch:</i> Entire length within community.....	*542
Maps available for inspection at the Town Hall, Ceredo, West Virginia.	
Send comments to The Honorable Mose Napier, Mayor of the Town of Ceredo, Wayne County, Town Hall, Ceredo, West Virginia 25707.	
Kenova (City), Wayne County	
<i>Ohio River:</i>	
Approximately 100 feet downstream of con- fluence of Big Sandy River.....	*550

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 528 feet upstream of Norfolk and Western Railway Bridge.....	*551	Send comments to The Honorable Romane Woodford, Mayor, City of Augusta, City Hall, 106 East Lincoln, Augusta, Wisconsin 54722.		Send comments to The Honorable Joy E. Close, Village President, Village of Knapp, Village Hall, Knapp, Wisconsin 54749.	
<i>Big Sandy River:</i>					
At confluence with Ohio River.....	*550				
Approximately 1,500 feet upstream of CSX Transportation Bridge.....	*550	Ellsworth (village), Pierce County		Woodville (village), St. Croix County	
Maps available for inspection at the City Building, 15th and Pine Street, Kenova, West Virginia.		<i>Isabelle Creek:</i>		<i>Carr Creek:</i>	
		About 850 feet downstream of Main Street.....	*1,029	Just upstream of South Side Drive.....	*1,123
		About 350 feet upstream of Railroad Street.....	*1,062	Just downstream of Chicago and North Western railroad.....	*1,141
		<i>Isabelle Creek Tributary:</i>		Maps available for inspection at the Village Hall, 102 South Main Street, Woodville, Wisconsin.	
		At mouth.....	*1,044	Send comments to The Honorable Arthur M. Best, Village President, Village of Woodville, Village Hall, P.O. Box 205, 102 South Main Street, Woodville, Wisconsin 54029.	
		Just upstream of Pleasant Avenue.....	*1,092		
		Maps available for inspection at the Village Hall, West Main Street, Ellsworth, Wisconsin.			
		Send comments to The Honorable Bill Falteisek, Village President, Village of Ellsworth, Village Hall, P.O. Box 47845, West Main Street, Ellsworth, Wisconsin 54011.			
WISCONSIN		Knapp (village), Dunn County			
Augusta (city), Eau Claire County		<i>Wilson Creek: Within community</i>	*907		
<i>Bridge Creek:</i>		Maps available for inspection at the Village Hall, Knapp, Wisconsin.			
About 150 feet downstream of State Road 27.....	*946				
About 1 mile upstream of Stone Street.....	*963				
Maps available for inspection at the City Clerk's Office, City Hall, 106 East Lincoln, Augusta, Wisconsin.					

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Maricopa County Unincorporated Areas.	Sols Wash.....	Approximately 50 feet downstream from Vulture Mine Road.	None	*2,165
			At the Atchison Topeka and Santa Fe Railway bridge in Section 32, T.8N., R.5W.	None	*2,235
			Approximately 1½ miles upstream from the Atchison Topeka and Santa Fe Railway in Section 31, T.8N., R.5W.	None	*2,292
			At the Yavapai and Maricopa County boundaries in Section 35, T.8N., R.6W.	None	*2,386
Maps are available for review at the Maricopa County Flood Control District, 3335 West Durango, Phoenix, Arizona 85009.					
Send comments to the Honorable Thomas Freestone, Chairman, Maricopa County Board of Supervisors, 111 South Third Avenue, Phoenix, Arizona 85003.					
Arizona	Town of Wickenburg, Maricopa County.	Sols Wash.....	At the confluence with Hassayampi River.....	*2,051	*2,050
			At U.S. Highway 89	*2,063	*2,059
		One mile upstream from U.S. Highway 89	*2,104.....	*2,103	
			2/3 mile downstream from Vulture Mine Road.....	None	*2,135
		At Vulture Mine Road.....	None	*2,166	
Maps are available for review at Town Hall, 120 E. Apache, Wickenburg, Arizona.					
Send comments to The Honorable James Mason, Mayor, Town of Wickenburg, Town Hall, P.O. Box 1269, Wickenburg, Arizona 85358.					
California	City of Petaluma, Sonoma County.	Petaluma River.....	At U.S. Highway 101	*7	*7
			Just downstream of Payran Street.....	*15	*16
			At confluence of North Corona Channel.....	*25	*26
			Just upstream of North Petaluma Boulevard southbound lane.	*32	*33
		Adobe Creek	At upstream corporate limits	*36	*36
			At confluence with Petaluma River	*7	*7
			Just downstream of South McDowell Boulevard exit.	None	*13
			Just upstream of Sartori Drive	None	*26
		Thompson Creek	Just downstream of Casa Grande Road.....	None	*73
			Approximately 90 feet downstream of 8th Street Bridge.	None	*22
		Kelly Creek	At corporate limit.....	None	*41
			Just upstream of 8th Street.....	None	*28
	Approximately 50 feet upstream of the 12th Street Footbridge.	None	*55		

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
	Just upstream of Ely Boulevard	Washington Creek	Just upstream of Madison Street.....	None	*17
			Just upstream of Maria Drive.....	None	*37
			Approximately 70 feet downstream of the city's corporate limits.	None	*78
		East Washington Creek	Just upstream of Washington Street.....	None	*34
		None.....	Just upstream of Maria Drive.....	None	*37
			*56		
			Approximately 100 feet downstream of the city's corporate limits.	None	*82
		Lynch Creek	At the confluence with Petaluma River.....	*16	*17
			Just upstream of U.S. Highway 101, northbound	None	*20
			Just upstream of Maria Drive.....	None	*41
			Just downstream of Ely Boulevard.....	None	*53
			Just upstream of Ely Boulevard.....	None	*61
		Carpi Creek.....	At the confluence with Petaluma River.....	*18	*20
			Approximately 200 feet upstream of McDowell Boulevard.	None	*32
			Just downstream of Ely Boulevard.....	None	*49
		Corona Creek	At the confluence with Capri Creek	None	*26
		North Corona Channel	At the confluence with Petaluma River.....	*25	*26
			Just downstream of U.S. Mail Driveway.....	None	*29
		Willow Brook.....	At the confluence with Petaluma River.....	*36	*36
			Just downstream of Old Redwood Highway	None	*40
		Shallow Flooding	Ponding at Napa Court.....	*28	*26
Florida.....	Unincorporated Areas of Brevard County.		At the intersection of McDowell Boulevard North and Scott Street.	#2	#2
			At the intersection of Scott Street and Holm Road.	#2	#3
		St. John's River.....	About 11.1 miles downstream of the county boundary.	None	*11
			At county boundary.....	None	*24
		Kid Creek	Just downstream of U.S. Route 1	None	*5
			About 0.63 mile upstream of William Avenue	None	*14
		North Prong Creek.....	At mouth	None	*6
			Just upstream of Wildon Road.....	None	*9
		South Prong Creek.....	Within community.....	*10	*6
		Goat Creek.....	At mouth	*5	*5
			About 0.65 mile upstream of Leghorn Road.....	None	*24
		Crane Creek Diversion from St. John's River.	Within community.....	None	*21
		Eau Gallie River.....	About 900 feet upstream of Eau Gallie Boulevard...	None	*7
			About 2200 feet upstream of Wickam Road.....	None	*22
		Mosquito Lagoon.....	At the intersection of Haulover Canal and State Road 3.	None	*5
			Along shoreline	None	*7
		Atlantic Ocean.....	About 200 feet north of the intersection of Northwest Drive and Northeast Drive.	None	*9
			About 350 feet east of the intersection of Orange Street and State Road A1A.	*12	*16
		Banana River.....	At the intersection of 14th Street and Palmer Court.	*5	*2
			Along shoreline, about 2,000 feet west of the intersection of Hangar Road and NASA Parkway East.	None	*7
		Indian River	Just northeast of the intersection of State Road 5 and Pineda Expressway.	*5	*3
			About 2000 feet northwest of the intersection of Country Road and Flounder Creek Road.	*4	*8
		Newfound Harbor.....	About 600 feet west of the intersection of Eastwood Drive and Newfound Harbor Drive.	*5	*3
			Just west of the intersection of Acorn Street and Angel Avenue.	*5	*6
Florida.....	City of Cape Canaveral ...	Atlantic Ocean.....	Just east of the intersection of Washington Avenue and Ridgewood Avenue.	*8	*9

Maps available for inspection at the Planning and Development Services, 2575 North Courtney Parkway, Merritt Island, Florida.

Send comments to The Honorable Tom Jenkins, Administrator, Brevard County, P.O. Box 1496, Titusville, Florida 32781-1496

Maps are available for review at the Community Development and Planning Department, 11 English Street, Petaluma, California.

Send comments to the Honorable Patricia Hilligoss, Mayor, City of Petaluma, P.O. Box 61, Petaluma, California 94953.

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Banana River	About 650 feet east of the intersection of Polk Avenue and Ridgewood Avenue.	*12	*14
		Along Justamere Drive about 850 feet west of the intersection of Justamere Drive and North Atlantic Avenue.	*4	*3	
			Along shoreline about 1100 feet west of the intersection of Center Street and North Atlantic Avenue.	*4	*5
Maps available for inspection at the City Hall, Cape Canaveral, Florida.					
Send comments to The Honorable Leo Nicholas, City Manager, City of Cape Canaveral, P.O. Box 326, Cape Canaveral, Florida 32920.					
Florida	City of Cocoa, Brevard County.	Indian River	About 175 feet west of the intersection of Indian River Drive Mac Farland Drive.	*4	*4
			Just east of the intersection of Mulberry Street and Indian River Drive.	*4	*6
Maps available for inspection at the City Hall, 603 Brevard Avenue, Cocoa, Florida.					
Send comments to The Honorable Dollye L. Robinson, Mayor, City of Cocoa, P.O. Box 1750, Cocoa, Florida 32922					
Florida	City of Cocoa Beach, Brevard County.	Banana River	Just west of the intersection of Palm Avenue and Olive Street.	*5	*2
		Atlantic Ocean	Just west of the west end of Sarasota Lane	*5	*5
			Just east of the intersection of Ocean Beach Boulevard and Gadsen Lane.	None	*11
			About 400 feet east of the intersection of Atlantic Boulevard and 2nd Street North.	*9	*16
Maps available for inspection at the City Hall, Cocoa Beach, Florida.					
Send comments to The Honorable James E. Smith, City Manager, City of Cocoa Beach, P.O. Box 320280, Cocoa Beach, Florida 32932-0280.					
Florida	Town of Indialantic, Brevard County.	Indian River	About 300 feet west of the intersection of Michigan Avenue and Riverside Drive.	*6	*5
			About 350 feet west of the intersection of Palmetto Place and South Riverside Drive.	*7	*7
		Atlantic Ocean	About 300 feet east of the intersection of 2nd Avenue and State Road A1A.	None	*11
			About 150 feet east of the intersection of Wave Crest Street and 11th Avenue.	*13	*15
Maps available for inspection at the Town Hall, 216 5th Avenue, Indialantic, Florida.					
Send comments to The Honorable Edward A. Gross, Town Manager, Town of Indialantic, 216 5th Avenue, Indialantic, Florida 32903.					
Florida	City of Indian Harbour Beach, Brevard County.	Banana River	Along shoreline	*6	*3
		Indian River	Along shoreline	*6	*4
		Atlantic Ocean	About 250 feet east of the intersection of State Road A1A and Atlantic Boulevard.	None	*11
			About 400 feet east of the intersection of State Road A1A and Ocean Dunes Drive.	*12	*15
Maps available for inspection at the City Hall, 2055 South Patrick Drive, Indian Harbour Beach, Florida.					
Send comments to The Honorable Richard G. Edgeton, City Manager, City of Indian Harbour Beach, 2055 South Patrick Drive, Indian Harbour Beach, Florida 32937-4497.					
Florida	Unincorporated Areas of Indian River County.	Main Relief Canal	About 300 feet downstream of Country Club Drive	None	*6
			Just downstream of spillway	None	*10
			Just upstream of spillway	None	*17
			About 1.9 miles upstream of King's Highway	None	*24
		North Relief Canal	About 0.8 mile downstream of U.S. Route 1	None	*7
			About 1 mile upstream of 66th Avenue	None	*23
		Lateral G	At mouth	None	*15
			About 2100 feet upstream of King's Highway	None	*23
		Lateral H	At mouth	None	*15
			Just downstream of 41st Street	None	*21
		South Relief Canal	At mouth	None	*5
			Just downstream of 43rd Avenue	None	*21
		Sebastian Creek/South Prong Creek	At mouth	10	*6
			About 100 feet downstream of Wabosso Road	None	*17
		Atlantic Ocean	Just west of A1A about 6000 feet south of North County Boundary.	8	*7
			About 300 feet east of the intersection of Live Oak Road and 46th Place.	12	*17
		Lateral J	At mouth	None	*15
			About 3000 feet upstream of Highland Drive	None	*21

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Indian River	About 1,600 feet west of A1A, about 2000 feet south of North County Boundary.	8	*5
		Vero Lakes Channel A	On Wabasso Island	8	*10
		Vero Lakes Channel B	About 100 feet upstream of mouth	None	*11
		Vero Lakes Channel C	At confluence of Vero Lakes Channel D	None	*23
		Vero Lakes Channel D	At mouth	None	*20
		St. John's Marsh	About .9 mile upstream of 101st Avenue	None	*24
			At mouth	None	*22
			About .5 mile upstream of 106th Avenue	None	*24
			At mouth	None	*23
			About 2,700 feet upstream of 102nd Avenue	None	*25
			At the intersection of State Road 60 and County Road 512.	None	*22
			Just downstream of State Road 60	None	*29

Maps available for inspection at the County Administration Building, 1840 25th Street, Vero Beach, Florida.

Send comments to The Honorable Charles P. Balczun, Administrator, Indian River County, County Administration Building, 1840 25th Street, Vero Beach, Florida 32960.

Florida	Town of Indian River Shores, Indian River County.	Atlantic Ocean	Along shoreline	11	*17
		Indian River	At the intersection of Hidden Oak Land	5	*7
			Barker Island	7	*9

Maps available for inspection at the Town Hall, 6001 North A1A, Vero Beach, Florida.

Send comments to The Honorable Joseph C. Dorsky, Town Manager, Town of Indian River Shores, Town Hall, 6001 North A1A, Vero Beach, Florida 32963.

Florida	Town of Malabar Brevard County.	Turkey Creek Channel B	About 700 feet upstream of mouth	17	*14
		Turkey Creek Channel C	About 1.34 miles upstream of mouth	17	*18
		Turkey Creek Channel C	Just upstream of mouth	17	*14
		Turkey Creek Channel C	About 1.1 miles upstream of mouth	18	*19
		Turkey Creek Channel G	At mouth	17	*14
		Turkey Creek Channel D	About .58 mile upstream of mouth	17	*19
		Turkey Creek Channel D	At mouth	16	*14
		Goat Creek	About .68 mile upstream of mouth	17	*17
		Goat Creek	At mouth	8	*5
		Indian River	About 2000 feet upstream of Unnamed Road	None	*11
		Indian River	About 200 feet east of intersection of Rocky Point Road and State Road 5.	8	*6
			Just east of intersection of South Rocky Point Drive and Rocky Point Road.	9	*7

Maps available for inspection at the Town Hall, Malabar, Florida.

Send comments to The Honorable Eugene Callagy, Mayor, Town of Malabar, P.O. Box 245, Malabar, Florida 32950-0245.

Florida	City of Melbourne, Brevard County.	St. Johns River	Within community	*24	*20
		Eau Gallie River	At mouth	*6	*
		Just downstream of Wickham Road.	*21	*14	
		Crane Creek	About 700 feet downstream of U.S. Route 1	*9	*5
		Crane Creek Channel A	Just upstream of Evans Road	*24	*21
		Crane Creek Channel A	At mouth	*19	*12
		Crane Creek Channel B	About 0.4 mile upstream of Airport Road	*22	*22
		About 1800 feet upstream of South Fairway Drive.	At mouth	*14	*6
		Indian River	*21	*16	
		Indian River	About 400 feet east of the intersection of Jouret Street and Pineapple Avenue.	*7	*3
			Just east of the intersection of Jernigan Avenue and Riverview Drive.	*9	*7
		Atlantic Ocean	About 300 feet east of the intersection of Paradise Boulevard and State Road A1A.	None	*11
			Along shoreline	*12	*15

Maps available for inspection at the City Hall, 900 East Strawbridge Avenue, Melbourne, Florida.

Send comments to the Honorable Samuel H. Halter, City Manager, City of Melbourne, 900 East Strawbridge Avenue, Melbourne, Florida 32901.

Florida	Town of Melbourne Beach, Brevard County.	Atlantic Ocean	Along Ocean Avenue about 175 feet east of intersection with Atlantic Street.	None	*13
			About 300 feet east of the intersection of Atlantic Street and Ocean Avenue.	*13	*15
		Indian River	Just west of the intersection of South Riverside Drive and 1st Avenue.	*7	*6

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Along shoreline about 100 feet west of intersection of A Avenue and South Riverside Drive.	*7	*7
Maps available for inspection at the Town Hall, 507 Ocean Avenue, Melbourne Beach, Florida.					
Send comments to the Honorable Ken Resor, Town Manager, Town of Melbourne Beach, Town Hall, 507 Ocean Avenue, Melbourne Beach, Florida 32915					
Florida.....	Town of Melbourne Village Brevard County.	Crane Creek Diversion from St. John's River.	About 400 feet upstream of Wickham Road.....	*24	*21
			About 2400 feet upstream of Dayton Boulevard.....	*23	*22
Maps available for inspection at the Town Hall, 535 Hammock Road, Melbourne Village, Florida.					
Send comments to the Honorable George Woodmansee, Mayor, Town of Melbourne Village, Town Hall, 535 Hammock Road, Melbourne Village, Florida 32904					
Florida.....	Town of Orchid, Indian River County.	Indian River	On Horseshoe Island.....	*7	*8
			At mouth of East Channel.....	*7	*10
Maps available for inspection at the Mayor's Home, 1 Dearfield Drive, Vero Beach, Florida.					
Send comments to the Honorable Lee E. Johnston, Mayor, Town of Orchid, 1 Dearfield Drive, Vero Beach, Florida 32963.					
Florida	City of Palm Bay, Brevard County.	St. John's River.....	Within community.....	*24	*21
		Turkey Creek.....	Just upstream of U.S. Route 1	*7	*5
			About 0.67 mile upstream of Port Malabar Boulevard.	*16	*14
		Turkey Creek Channel A	At mouth	*12	*9
			About 2100 feet upstream of Knecht Road	*20	*19
		Turkey Creek Channel B	Within community.....	*16	*14
		Turkey Creek Channel C	Within community.....	*16	*14
		Turkey Creek Channel C-76	At mouth	*None	*14
			About 1350 feet upstream of Charles Boulevard	*None	*29
		Turkey Creek Channel D	Just upstream of mouth	*16	*14
			Just upstream of Oaklyn Street	*16	*17
		Indian River	Just east of the intersection of Herndon Circle and Anglers Drive.	*9	*6
			Just east of the intersection of Apollo II Boulevard and Harbor Boulevard.	*9	*7
Maps available for inspection at the City Hall, 2145 Palm Bay Road NE., Palm Bay, Florida.					
Send comments to The Honorable Richard Diamond, City Manager, City of Palm Bay, City Hall, 2145 Palm Bay Road, NE., Palm Bay, Florida 32905					
Florida.....	City of Rockledge, Brevard County.	St. John's, River.....	Within community.....	*20	*18
		Indian River	Along Old Dixie Highway about 0.61 mile south of the intersection of Floridelphia Avenue.	None	*4
			Just east of the intersection of Bouganville Drive and Rockledge Drive.	*3	*6
Maps available for inspection at the City Hall, Rockledge, Florida.					
Send comments to The Honorable James McKnight, City Manager, City of Rockledge, P.O. Box 488, Rockledge, Florida 32955-0488.					
Florida.....	City of Satellite Beach, Brevard County.	Atlantic Ocean.....	About 200 feet east of the intersection of Ocean Spray Avenue and Sheppard Boulevard.	None	*11
			About 400 feet east of the intersection of Ocean Spray Avenue and Sheppard Boulevard.	*12	*15
		Indian River	Within community.....	*6	*3
Maps available for inspection at the City Hall, 510 Cinnamon Drive, Satellite Beach, Florida.					
Send comments to The Honorable Michael P. Crotty, City Manager, City of Satellite Beach, City Hall, 510 Cinnamon Drive, Satellite Beach, Florida 32937-3197.					
Florida	City of Sebastian, Indian River County.	Indian River	At intersection of Indian River Drive and Davis Street.	*8	*8
			About 100 feet east of intersection of Indian River Drive and Harrison Street.	*8	*9
		South Prong Creek/Sebastian Creek.	About 800 feet west of intersection of Robin Lane and Roseland Road.	*None	*6
			About 400 feet upstream of confluence of Elkcam Waterway.	*None	*13
		Collier Creek.....	About 200 feet downstream of Roseland Road	*None	*6
			Just downstream of spillway	*None	*10
			Just upstream of spillway	*None	*18
			About 250 feet downstream of Fellsmere Road.....	*None	*18
		Collier Water-Way/Elkcam Waterway.	About 200 feet upstream of mouth	*None	*12
			Just downstream of dam	*None	*13
			Just upstream of dam	*None	*18
			About 200 feet downstream of Fellsmere Road.....	None	*19

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, 1225 Main Street, Sebastian, Florida.					
Send comments to The Honorable Robert McClary, City Manager, City of Sebastian, P.O. Box 780127, Sebastian, Florida 32978-0127					
Florida.....	City of Titusville, Brevard County.	Shallow Flooding (due to ponding from rainfall):	At the intersection of Cherrywood Lane and Hickory Hill Boulevard.	None	*20
			At the intersection of Crescent Drive and Melody Lane.	None	*22
		Indian River	Just east of the intersection of Coquina Avenue and State Road 5.	*4	*3
			Just east of the intersection of Main Street and Indian River Avenue.	*4	*5
Maps available for inspection at the City Hall, Titusville, Florida.					
Send comments to The Honorable Randall Reid, City Manager, City of Titusville, P.O. Box 286, Titusville, Florida 32781-2806.					
Florida.....	City of Vero Beach, Indian River County.	Main Relief Canal	About 700 feet downstream of U.S. Route 1.....	None	*9
			Just downstream of spillway	None	*10
			Just upstream of spillway	None	*17
			Just upstream of control structure.....	None	*20
		Indian River	At the intersection of Beachland Boulevard and Mockingbird Drive.	*5	*6
			Fareley Island.....	*5	*8
		Atlantic Ocean:.....	About 300 feet east of the intersection of Easter Lilly Lane and Ocean Drive.	*12	*17
			About 1,000 feet east of intersection of Tulip Lane and Ocean Drive.	*9	*13
Maps available for inspection at the Planning Department, City Hall, Vero Beach, Florida.					
Send comments to The Honorable John V. Little, City Manager, City of Vero Beach, P.O. Box 1389, Vero Beach, Florida 32961-1389.					
Florida.....	City of West Melbourne, Brevard County.	St. John's River.....	Within community.....	*23	*20
		Crane Creek Diversion from St. John's River.	Just upstream of John Rodes Boulevard	*23	*21
			Just downstream of Evans Road.....	*24	*22
		Crane Creek.....	Just upstream of Dairy Road About 2,700 feet upstream of.	*23	*19
			Dairy Road	*23	*20
Maps available for inspection at the City Hall, 2285 Minton Road, West Melbourne, Florida.					
Send comments to The Honorable Mark K. Ryan, City Manager, City of West Melbourne, City Hall, 2285 Minton Road, West Melbourne, Florida 32904.					
Iowa	City of Independence, Buchanan County.	Wapsipinicon River.....	About 1.1 miles downstream of Third Avenue S.E. .	*908	*900
			About 1,900 feet upstream of Illinois Central Railroad.	*915	*911
		Malone Creek.....	At mouth	*908	*901
			About 1.1 miles upstream from Third Street N.E.	*928	*932
Maps available for inspection at the City Hall, 331 First Street, East, Independence, Iowa.					
Send comments to The Honorable Frank Birmer, Mayor, City of Independence, City Hall, 331 First Street, East, Independence, Iowa 50644.					
Massachusetts	Andover, Town, Essex County.	Merrimack River.....	Approximately 7,800 feet downstream of Interstate Route 93.	*49	*50
			At upstream corporate limits	*56	*59
		Shawsheen River.....	Upstream side of Boston and Maine Railroad.....	*34	*35
			Downstream side of Ballardville Dam	*63	*64
		Fish Brook	At confluence with Merrimack River.....	None	*55
			Approximately 30 feet upstream of Greenwood Road.	None	*123
		Hussey Brook.....	At confluence with Shawsheen River	None	*37
			Approximately 0.7 mile upstream of Beacon Street.	None	*137
		Hussey Brook Tributary.....	At confluence with Hussey Brook.....	None	*61
			Approximately 250 feet upstream of Beacon Street.	None	*94
Maps available for inspection at the Engineering Department, Town Offices, Andover, Massachusetts.					
Send comments to The Honorable William Downes, Chairman of the Town of Andover Board of Selectmen, Essex County, Town Offices, Andover, Massachusetts 01810.					
Massachusetts	Dracut, Town, Middlesex County.	Merrimack River	At downstream corporate limits	*52	*57
			At upstream corporate limits	*59	*63
		Beaver Brook	At downstream corporate limits	*70	*76
			Approximately 700 feet upstream of Parker Avenue.	*85	*87

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,400 feet upstream of Parker Avenue.	*88	*87
			Approximately 1,000 feet upstream of Phineas Street.	*90	*91
		Richardson Brook	At confluence of Gumpas Pond Brook	*124	*123
			At confluence with Merrimack Road	*56	*60
			Upstream side of Methuen Street	*79	*86
			Upstream side of Cranberry Road	None	*107
			Upstream side of State Route 113 (Broadway Street).	None	*168
		Trout Brook	At confluence with Richardson Brook	None	*85
			Upstream side of Parker Avenue	None	*143
		Tributary to Beaver Brook	At confluence with Beaver Brook	None	*91
			Approximately 880 feet upstream of Lakeview Avenue.	None	*106
		Peppermint Brook	At confluence with Beaver Brook	*70	*75
			Approximately 100 feet downstream of Hildreth Street.	*82	*81
		Gumpas Pond	At upstream corporate limits (State Boundary)	*124	*123

Maps available for inspection at the Town Hall, Town Clerk's Vault, Dracut, Massachusetts.

Send comments to The Honorable Dennis Plendak, Manager of the Town of Dracut, Middlesex County, 67 Arlington Street, Dracut, Massachusetts 01826.

Massachusetts	Town of Needham, Norfolk County.	Charles River	At downstream corporate limits	*75	*75
			At upstream corporate limits	*110	*109
		F fuller Brook	Entire reach from corporate limits upstream to a point approximately 630 feet downstream of S.R. 135.	None	*134

Maps available for inspection at the Planning Department, Town Hall, Needham, Massachusetts 02192.

Send comments to The Honorable H. Philip Garrity, Chairman of the Town of Needham Board of Selectmen, Norfolk County, 1471 Highland Avenue, Needham, Massachusetts 02192.

Michigan	Garfield Township, Newaygo County.	Muskegon River	At downstream corporate limits	None	*627
			About 800 feet downstream of Bridge Street	None	*642

maps available for inspection at the Township Hall, 6333 Bingham Avenue, Mewaygo, Michigan.

Send comments to The Honorable Janet Barends, Supervisor, Township of Garfield, Township Hall, 6333 Bingham Avenue, Newaygo, Michigan 49337.

Mississippi	City of Columbus, Lowndes County.	Tombigbee River	About 1.0 mile downstream of Illinois Central Gulf Railroad.	*172	*170
			About 1.3 miles upstream of Columbus Lock and Dam.	*178	*176
		Luxapalila Creek	About 1.0 mile downstream of Illinois Central Gulf Railroad.	None	*170
			About 1.8 miles upstream of U.S. Highway 82	None	*184
		Vernon Branch	Just downstream of Illinois Central Gulf Railroad	*177	*180
			About 300 feet upstream of Illinois Central Gulf Railroad.	*180	*182
		Magby Creek	At mouth	*172	*177
			Just downstream of Lehmbeig Road	*188	*188

Maps available for inspection at the City Hall, Columbus, Mississippi.

Send comments to the Honorable James Trotter, Mayor, City of Columbus, P.O. Box 1405, Columbus, Mississippi 39701.

Mississippi	Unincorporated Areas of Lowndes County.	Black Creek	At confluence with Luxapalila Creek	None	*185
			Just downstream of Gilmer Road	None	*218
		Ellis Creek	At confluence with Tombigbee River	*164	*162
			About 2.6 miles upstream of State Highway 69	*228	*228
		Greens Creek	At confluence with Ellis Creek	*166	*163
			Just downstream of Lake Lowndes Road	*273	*273
		Luxapalila Creek	At mouth	*171	*169
			At state boundary	*213	*214
		Luxapalila Creek Tributary	At confluence with Luxapalila Creek	*200	*199
			About 2,000 feet upstream of State Highway 50	*228	*228
		McCrary Creek	Just downstream of Sewage Treatment Plant Access Road.	*171	*172
			At state boundary	*275	*275
		Oak Slush Creek	At confluence with Tombigbee River	*176	*173
			Just upstream of Younger Road	*206	*207
		Oak Slush Creek Tributary	At confluence with Oak Slush Creek	*176	*175
			About 2,500 feet upstream of West Point Road	*188	*188
		Ellis Creek Tributary	At confluence with Ellis Creek	*178	*179
			About 3,900 feet upstream of Hildreth Road	*266	*266

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Tombigbee River.....	At state boundary	*155	*153
		Tombigbee River Tributary No. 1.	At confluence of Buttahatchie River	*193	*186
			At confluence with Tombigbee River	*168	*166
			About 3,600 feet upstream of Burlington Northern railroad.	*186	*186
		Tombigbee River Tributary No. 2.	At mouth	*177	*176
		Yellow Creek	About 1,100 feet upstream of New Bell Road.....	*198	*198
			At confluence with Luxapallia Creek	*192	*196
			About 2.3 miles upstream of Caledonia-Steens Road.	*204	*204
		Tibbee Creek.....	At mouth	*178	*176
		Magby Creek	At confluence of Catalpa Creek.....	*181	*181
			Just upstream of Lehmborg Road.....	*190	*188
			Just downstream of Lee Stokes Road.....	*228	*230
			Just upstream of Lee Stokes Road.....	*233	*235
			At state boundary	*235	*236

Maps available for inspection at the County Courthouse, Columbus, Mississippi.

Send comments to the Honorable Harold Bialock, President, Board of Supervisors, Lowndes County, P.O. Box 1364, Columbus, Mississippi 39703.

North Dakota	City of Killdeer, Dunn County.	Spring Creek.....	Approximately 1,500 feet downstream of Section Line Road.	*2226	*2226
			Backwater along Gumbo Creek, approximately 700 feet upstream of Section Line Road.	*2226	*2228
			At the Burlington Northern Railroad.....	*2229	*2231
			Approximately 3,460 feet downstream of State Highway 22.	*2241	*2241
			Approximately 1,800 feet upstream of State Highway 22.	*2248	*2247
			Approximately 6,000 feet upstream of State Highway 22.	*2255	*2255

Maps are available for review at City Hall, Railroad Street, Killdeer, North Dakota.

Send comments to the Honorable Robert Binek, Mayor, City of Killdeer, P.O. Box 515, Killdeer, North Dakota 58640.

Ohio	City of Lancaster, Fairfield County.	Hoking River	About 1,500 feet downstream of Sugar Grove Road.	*807	*807
			Just downstream of Collins Road.....	*836	*836
		Pleasant Run.....	Just upstream of Duffy Road	None	*819
			Just downstream of Marietta Road	*842	*842
		Baldwin Run	At mouth	*813	*812
			At confluence of Fellers Run.....	*822	*822
		Ewing Run	At confluence with Baldwin Run.....	*822	*822
			About 2,400 feet upstream of Rainbow Drive.....	*904	*913
		Fellers Run.....	At mouth	*822	*822
			About 8,000 feet upstream of Granville Pike.....	*877	*876
		Tarhe Run.....	At mouth	*816	*818
			About 1,700 feet upstream of abandoned railroad bridge.	*None	*847
		Hunters Run	At mouth	*821	*821
			Just downstream of Lincoln Avenue.....	*834	*834
		Lateral A	At mouth	*823	*823
			About 1,300 feet upstream of Hawthorne Drive.....	*None	*869
		Lateral B	At mouth	*824	*824
			Just downstream of West Fair Avenue.....	*831	*836
		Raccoon Run	Just upstream of West Fair Avenue.....	*836	*836
			Just downstream of Farm Road	*844	*844
			Just upstream of Farm Road	*849	*849
			About 400 feet upstream of Nolder Drive	*None	*862
		Lateral D	Just upstream of Conrail.....	*None	*843
			Just downstream of Marietta Road	*None	*848
			At mouth	*831	*831
			About 1.5 miles upstream of West Fair Avenue.....	*None	*868

Maps available for inspection at the Municipal Building, 104 East Main Street, Lancaster, Ohio.

Send comments to The Honorable Don Maddux, Mayor, City of Lancaster, Municipal Building, 104 East Main Street, Lancaster, Ohio 43130.

South Carolina	City of Georgetown, Georgetown County.	Whites Creek.....	About 0.9 mile downstream of CSX railroad	*11	*9
			About 2,600 feet upstream of Highmarket Street....	*11	*11
		Whites Creek Tributary	Within community.....	*11	*10
		Winyah Bay/Sampt River.....	Along Whites Creek from corporate limits to CSX railroad.	*11	*9
		Winyah Bay.....	At intersection of U.S. Route 17 and Martin Street.	*12	*9

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At intersection of Front Street and Meeting Street..	*11	*9
			Along shoreline south of Sampit River	*16	*14
Maps available for inspection at the City Hall, 120 North Fraser Street, Georgetown, South Carolina.					
Send comments to The Honorable H.E. Donoiti, Mayor, City of Georgetown, City Hall, 120 North Fraser Street, Georgetown, South Carolina 29442.					
South Carolina.....	Unincorporated Areas of Georgetown County.	Allston Creek Tributary No. 1....	Just upstream of U.S. Business Route 17	None	*11
			About 1.0 mile upstream of U.S. Route 17 Bypass	None	*25
		Allston Creek Tributary No. 2....	Just upstream of U.S. Business Route 17	None	*11
			About 1400 feet upstream of Lee Street.....	None	*21
		Atlantic Ocean.....	About 3.7 miles upstream along the Santee River from the confluence of the South Santee River.	None	*8
			At Georgetown County/Horry County boundary along coastline.	*19	*23
		Bells Swamp.....	At mouth	None	*17
			Just upstream of State Route 249	None	*39
		Bells Swamp Tributary	At mouth	None	*17
			Just upstream of State Route 126	None	*31
		Black River	Just upstream of U.S. Route 701	None	*8
			Just downstream of State Route 51	None	*12
		Boser Swamp.....	At mouth	None	*20
			Just downstream of State Route 35	None	*22
		Canaan Branch	At mouth	None	*9
			Just downstream of State Route 318	None	*20
		Chapel Creek.....	Just upstream of State Route 52	None	*8
			About 2000 feet upstream of U.S. Route 701	None	*22
		Chapel Creek Tributary No. 1....	At mouth	None	*8
			About 2200 feet upstream of Woodlands Road.....	None	*11
		Chapel Creek Tributary No. 2....	At mouth	None	*8
			Just downstream of State Route 180	None	*19
		Chapel Creek Tributary No. 3....	At mouth	None	*9
			Just downstream of State Route 180	None	*20
		Chapel Creek Tributary No. 4....	At mouth	None	*9
			About 1000 feet upstream of State Route 180	None	*15
		Chapel Creek Tributary No. 5....	At mouth	None	*13
			About 900 feet upstream of State Route 180.....	None	*16
		Cypress Creek.....	At mouth	None	*8
			About 1.1 miles upstream of U.S. Route 701	None	*12
		Cypress Creek Tributary No. 1....	At mouth	None	*8
			About 2400 feet upstream of confluence of Cypress Creek Tributary No. 2:.	None	*18
		Cypress Creek Tributary No. 2....	At mouth	None	*9
			About 750 feet upstream of State Route 820.....	None	*13
		Parsonage Creek Tributary.....	Just upstream of U.S. Business Route 17	None	*11
			Just upstream of U.S. Route 17	None	*19
		Pennyroyal Creek.....	At mouth	None	*9
			Just downstream of Pennyroyal Road	None	*9
		Port Creek.....	Just upstream of State Route 36	None	*16
			At confluence of Boser Swamp	None	*20
		Ports Creek.....	At mouth	None	*9
			Just downstream of U.S. Route 17A.....	None	*9
		Pennyroyal Swamp	At confluence of Boser Swamp	None	*20
			About 2.9 miles upstream of confluence of Boser Swamp.	None	*34
		Port Creek Tributary	At mouth	None	*17
			About 1.33 miles upstream of mouth.....	None	*40
		Sampit River	At mouth	*16	*14
			Just downstream of U.S. Route 17A.....	None	*9
		St. Paul Branch.....	At mouth	None	*8
			Just downstream of U.S. Route 701	None	*20
		St. Pauls Branch Tributary No. 1.	At mouth	None	*8
			Just downstream of dam (about 1400 feet upstream of mouth).	None	*8
			Just upstream of dam (about 1400 feet upstream of mouth).	None	*13
			About 3200 feet upstream of dam (about 1400 feet upstream of mouth).	None	*17
		St. Pauls Branch Tributary No. 2.	At mouth	None	*8
			Just downstream of State Route 269	None	*12
		Turkey Creek.....	At mouth	None	*9
			Just downstream of Pennyroyal Road	None	*9
		Whites Creek.....	At mouth	*11	*9
			Just downstream of old railroad grade	None	*17

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Whites Creek Tributary No. 1.....	At mouth	*11	*9
			About 1800 feet upstream of mouth.....	None	*13
		White Creek Tributary No. 2.....	At mouth	*11	*9
			About 2550 feet upstream of mouth.....	None	*12
		Whites Creek Tributary No. 3.....	At mouth	*11	*9
			About 0.95 mile upstream of mouth.....	None	*18
		Whites Creek Tributary No. 4.....	At mouth	*11	*9
			About 1750 feet upstream of U.S. Route 17A.....	None	*17
		Whites Creek Tributary No. 5.....	At mouth	*11	*10
			About 1850 feet upstream of mouth.....	None	*18
		Whites Creek Tributary No. 6.....	At mouth	*11	*11
			About 1.42 miles upstream of mouth.....	*11	*18
		Whites Creek Tributary No. 7.....	At mouth	*11	*17
			About 2500 feet upstream of mouth.....	*11	*18
		Winyah Bay Tributary.....	Just upstream of Belle Isle Lake Concrete Weir.....	*14	*10
			Just downstream of South Island Road.....	*14	*12

Maps available for inspection at the Building Department, County Courthouse, Georgetown, South Carolina.

Send comments to The Honorable Dan L. Guffey, County Administrator, Georgetown County, County Courthouse, P.O. Drawer 1270, Georgetown, South Carolina 29442.

South Carolina.....	Town of Paleys Islands, Georgetown County.	Atlantic Ocean.....	At the intersection of Myrtle Avenue and Third Street. About 800 feet north and 1,200 feet east of the intersection of the North Causeway and Myrtle Avenue.	*16 *19	*14 *21
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Maps available for inspection at the Pawleys Island Visitor's Center, North Causeway, Pawleys Island, South Carolina.

Send comments to The Honorable James D. Prince, Mayor, Town of Pawleys Island, P.O. Box 1818, Pawleys Island, South Carolina 29585.

Tennessee.....	City of Copperhill, Polk County.	Ocoee River	About 0.65 mile downstream of Fightingtown Creek. About 0.62 mile upstream of Fightingtown Creek.....	None None	*1,453 *1,458
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Maps available for inspection at the City Hall, Copperhill, Tennessee.

Send comments to the Honorable Sylvan Greene, Mayor, City of Copperhill, City Hall, P.O. Box 640, Copperhill, Tennessee 37317.

Texas.....	Garland City, Dallas County.	Duck Creek.....	Approximately 9,980 feet downstream of Broadway Boulevard. At upstream corporate limits	*438 *596	*437 *595
		Stream 2C1	At confluence with Duck Creek	*443	*442
			Downstream side of Tacoma Drive	*485	*486
		Stream 2C2	At confluence with Duck Creek	*497	*496
			Upstream side of Roanoke Drive	None	*563
		Stream 2C6	At confluence with Duck Creek	*573	*572
		Rowlett Creek.....	Approximately 2,500 feet downstream of Miller Road. Approximately 3,100 feet downstream of Blackburn Road.	*440 *501	*441 *502
		Stream 2D1	At downstream corporate limits	None	*440
			Upstream side of Centerville Road	*481	*482
		Mills Branch.....	At confluence with Rowlett Creek	*445	*448
			Downstream side of Atchison-Topeka and Santa Fe Railroad.	*534	*535
		Stream 2D5	At confluence with Rowlett Creek	*492	*494
			Approximately 100 feet upstream of North Star Road.	*518	*517
		Stream 2D6	At confluence with Stream 2D5	*493	*494
			Upstream side of North Star Road.....	*510	*511

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Spring Creek.....	Approximately 1,000 feet downstream of Naaman School Road.	*489	*490
		Stream 215.5.....	Approximately 200 feet downstream of Spring Creek Parkway.	*None	*537
			At upstream corporate limits	*None	*556

Maps available for inspection at the City Hall, Garland, Texas.

Send comments to the Honorable Bill Tomlinson, Mayor of the City of Garland, Dallas County, P.O. Box 469002, Garland, Texas 75046.

Vermont.....	Royalton, Town, Windsor County.	White River	At downstream corporate limits Windsor County	*457	*457
			At upstream corporate limits	*476	*475
		First Branch White River.....	At confluence with White River.....	*535	*532
			At corporate limits.....	*516	*511
		Second Branch At confluence with White River.	*507	*506	
			At upstream corporate limits	*530	*528

Maps available for inspection at the Town Clerk's Office, South Royalton, Vermont.

Send comments to the Honorable David Lyman, Chairman of the Town of Royalton Board of Selectmen, Windsor County, P.O. Box 680, South Royalton, Vermont 05068.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: August 10, 1988.

[FR Doc. 88-18579 Filed 8-16-88; 8:45 am]

BILLING CODE 6718-01-M

Notices

Federal Register

Vol. 53, No. 159

Wednesday, August 17, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Working Group on Model Rules; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Working Group on Model Rules of the Administrative Conference of the United States, to be held at 12 noon on Friday, September 9, 1988, at the offices of the Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC.

The Working Group will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by federal agencies in formal adjudications.

For further information concerning this meeting, contact Gary J. Edles, Legal Counsel, Administrative Conference of the United States, 2120 L Street, NW., Washington, DC. (Telephone: 202-254-7020).

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Jeffrey S. Lubbers,
Research Director.
August 10, 1988.

[FR Doc. 88-18565 Filed 8-16-88; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agriculture Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October

1972 (Pub. L. 92-463, 86 Stat. 770-776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting:

Name: Agriculture Biotechnology Research Advisory Committee.

Date: September 22-23, 1988.

Time: 9:00 a.m. to approximately 5:00 p.m. on September 22, 9:00 a.m. to approximately 3:00 p.m. on September 23.

Place: Room 104-A, the "Williamsburg Room", USDA Administration Building, 14th and Independence Avenue SW., Washington, DC.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistance Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The major items to be considered at this meeting are the development of guidelines for biotechnology research in agriculture and a field handbook for agricultural researchers using materials and methods of biotechnology.

Contact Person: Dr. Alvin L. Young, Executive Secretary, Agriculture Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321-A, Administration Building, 14th and Independence Avenue SW., Washington, DC, 20250. Telephone (202) 447-9165.

Done at Washington, DC, this 8th day of August 1988.

Robert W. Long,

Deputy Assistant Secretary, Science and Education.

[FR Doc. 88-18655 Filed 8-16-88; 8:45 am]

BILLING CODE 3410-22-M

Forms Under Review by Office of Management and Budget

August 12, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service
California Pears, Plums, and Peaches,
Marketing Order No. 917
No agency report forms
Recordkeeping: On Occasion;
Monthly; Semi-annually
Farms; Businesses or other for-profit;
Small business or organizations;
3,562 responses; 2,826 hours; not
applicable under 3504(h)
Virginia M. Olson (202) 447-5057

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 88-18593 Filed 8-16-88; 8:45 am]

BILLING CODE 3410-01-M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date and Time: September 13-14, 1988—
September 15, 1988, 8:30 a.m.-5:00 p.m.—8:30
a.m.-12:00 noon

Place: 1021 East Bandanna Boulevard, St.
Paul, Minnesota (Bandanna Squire).

Type of Meeting: Open to the public.
Persons may participate in the meeting as
time and space permit.

Comments: The public may file written
comments before or after the meeting with
the contact person listed below.

Purpose: To evaluate and recommend
proposals for cooperative research on
problems that concern agriculture in two or
more States, and to make recommendations
for allocation of regional research funds
appropriated by Congress under the Hatch
Act for research at the State agricultural
experiment stations.

Contact Person for Agenda and More
Information: Dr. John A. Naegele, Executive
Secretary, U. S. Department of Agriculture,
Cooperative, State Research Service, Room
328, Aerospace, Building, Washington, DC
20251-2200, Telephone: 202-447-4587.

Done at Washington, DC, this 8th day of
August, 1988.

John Patrick Jordan,

Administrator, Cooperative State Research
Service.

[FR Doc. 88-18656 Filed 8-16-88; 8:45 am]

BILLING CODE 3410-22-M

Farmers Home Administration

Farmers Home Administration Programs and Activities Covered Under Executive Order 12372

AGENCY: Farmers Home Administration,
USDA.

ACTION: Notice.

SUMMARY: The purpose of this Notice is
to inform State and local governments
and other interested persons of USDA
programs and activities included within
the scope of Executive Order (E.O.)
12372, "Intergovernmental Review of
Federal Programs." A full understanding
of the requirements of the Order may be
gained by referring to the final rules
published in 7 CFR 3015, Subpart V, at
48 FR 29100, dated June 24, 1983.

DATE: August 17, 1988.

FOR FURTHER INFORMATION CONTACT:
Mr. Warren Clayman, Environmental
Protection Specialist, Program Support
Staff, FmHA, Room 5302-South Building,
Washington, DC 20250 (Telephone 202-
382-9656).

SUPPLEMENTARY INFORMATION: The
programs listed below by Catalog of
Federal Domestic Assistance (CFDA)
number are being included for coverage
under E.O. 12372.

Farmers Home Administration

10.424 Industrial Development Grants

This program was previously included
in the CFDA under this same number. It
was deleted from the catalog in June
1982 due to an expiration of its budget
authority. Consequently, it was deleted
from the list of programs subject to the
Executive Order in a Federal Register
(FR) notice on January 9, 1985 (50 FR
1040).

The program is now being reinstated
and it will appear in the June 1988 basic
edition of the CFDA. Additionally,
through publication of this FR notice, it
will again become eligible for review
under the Intergovernmental Review
Process. States interested in reviewing
this program may add it to their list of
USDA programs eligible for review
under the Executive Order.

10.437 Rural Development Loan Fund

The Rural Development Loan Fund
(RDLF) is a loan program designed to
assist in the establishment and
development of businesses in rural
areas.

The RDLF program provides for loans
to private and public nonprofit
organizations referred to as
intermediaries. These intermediaries
then relend these funds to qualifying
applicants known as the ultimate
recipient.

This program was originally
administered by the Department of
Health and Human Services (HHS)
under Catalog of Federal Domestic
Assistance Number 13.664. Some of the
funds that were loaned to
intermediaries, before the transfer to
USDA, have not as yet been loaned to
ultimate recipients.

All of these loans, including those
from intermediaries to ultimate
recipients, will be subject to review
under E.O. 12372.

10.438 Intermediary Relending Program

The Intermediary Relending Program
(IRP) is a new program authorized by
Congressional action. It provides for
loans from FmHA to private or public
nonprofit organizations which are called
intermediaries. Loans to any one
intermediary may not exceed \$3,000,000.
The intermediaries will use the funds to
help establish revolving loan funds. The
intermediaries will then provide loans in
rural areas for business and community
development projects. The entities that
receive loans from intermediaries are
called ultimate recipients.

Loans to intermediaries under this
program are subject to Executive Order
12372 and eligible for inclusion in the

Intergovernmental Review Process.
Loans from intermediaries to ultimate
recipients, using funds the intermediary
received from FmHA, are also subject to
Executive Order 12372 and the
Intergovernmental Review Process.

Date: July 20, 1988.

Neal Sox Johnson,

Acting Administrator Farmers Home
Administration.

[FR Doc. 88-18594 Filed 8-16-88; 8:45 am]

BILLING CODE 3410-07-M

COMMISSION ON CIVIL RIGHTS

Hawaii Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the
provisions of the Rules and Regulations
of the U.S. Commission on Civil Rights,
that a meeting of the Hawaii Advisory
Committee to the Commission will
convene at 1:00 p.m. and adjourn at 5:00
p.m., on September 6, 1988 at the Ilikai
Hotel, 1777 Ala Moana Boulevard,
Waikiki Suite, Honolulu, Hawaii 96815.
The purpose of the meeting is to obtain
information on the status of the
implementation of the Hawaiian Homes
Commission Act.

Persons desiring additional
information, or planning a presentation
to the Committee, should contact
Committee Chairperson, Andre S.
Tatibouet, or Philip Montez, Director of
the Western Regional Division (213)
894-3437, (TDD 213/894-0508). Hearing
impaired persons who will attend the
meeting and require the services of a
sign language interpreter, should contact
the Regional Division at least five (5)
working days before the scheduled date
of the meeting.

The meeting will be conducted
pursuant to the provisions of the rules
and regulations of the Commission.

Dated at Washington, DC, August 9, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-18566 Filed 8-16-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL
Implementation Technical Advisory
Committee will be held September 8,
1988, 9:30 a.m., Herbert C. Hoover
Building, Room 4830, 14th Street and

Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Military Critical Technologies List (MCTL) into the Export Administration Regulations and provides for continuing review to update the Regulations as needed.

Agenda: Open Session

1. Opening Remarks by the Chairman.
2. Introduction of Members & Public Attendees.
3. Introduction of Invited Guests.
4. Presentation of Papers or Comments by the Public.
5. Consideration of Ad Hoc Group's Recommendations to the MCTL Technical Advisory Committee Regarding Role of the TACs in the List Review Process.

6. Review of Proposed Changes in Technical Data Regulations.
7. Review of Proposed Changes to Executive Order 12356.

Executive Session:

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in sections 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes contact Ruth D. Fitts, 202-377-2583.

Dated: August 12, 1988.

Betty A. Ferrell,

*Acting Director, Technical Support Staff,
Office of Technology and Policy Analysis.*

[FR Doc. 88-18610 Filed 8-16-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and State antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate

of Review, application number 86-A0011."

OETCA has received the following application for an amendment to Export Trade Certificate of review #86-00011, issued on June 30, 1987 (52 FR 25622, July 8, 1987).

Applicant: Millers' National Federation (MNF), 600 Maryland Avenue, SW, Suite 305 West, Washington, DC 20024.

Contact: Roy M. Henwood, Jr., President, telephone: (202) 484-2200.

Application: #86-A0011.

Date Deemed Submitted: August 2, 1988.

Summary of the Application

Millers' National Federation seeks to amend its certificate by making the following changes with respect to the parties named as "Members" within the meaning of 15 CFR 325.2(1):

1. Delete International Multifoods Corporation of Minneapolis, Minnesota as a "Member."

2. Add Dixie Portland Flour Mills, Inc. of Memphis, Tennessee as a "Member."

Under the proposed amendment, "Members" would include (in addition to the applicant): Roy M. Henwood, President of MNF; Paul B. Green, Consultant to MNF; and members of the Foreign Agricultural Policy Committee of MNF to the extent that they represent MNF as members of the committee (Cereal Food Processors, Inc.; ADM Milling Company; Bartlett Milling Company; ConAgra/Peavey; Dixie Portland Flour Mills, Inc.; The Pillsbury Company; and Cargill, Inc.).

Date: August 12, 1988.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 88-18609 Filed 8-16-88; 8:45 am]

BILLING CODE 3510-DR-M

Applications for Duty-Free Entry of Scientific Instruments; Texas A&M University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question on whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington.

DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-051R. Applicant: Texas A & M University, Department of Chemistry, College Station, TX 77843-3255. **Instrument:** Fluorescence Lifetime Spectrometer. **Manufacturer:** Edinburgh Instruments, Ltd., United Kingdom. Original notice of this resubmitted application was published in the *Federal Register* of January 22, 1988.

Docket Number: 88-111R. Applicant: National Aeronautics and Space Administration, Langley Research Center, Building 1195A, Room 103, Hampton, VA, 23665-5225. **Instrument:** FT-IR Spectrophotometer. **Manufacturer:** BOMEM, Inc., Canada. Original notice of this resubmitted application was published in the *Federal Register* of April 27, 1988.

Docket Number: 88-231. Applicant: University of Kentucky, Markey Cancer Center, 800 Rose Street, Lexington, KY 40536-0084. **Instrument:** Scanning Electron Microscope, Model S-900. **Manufacturer:** Hitachi Scientific, Japan. **Intended use:** The instrument will be used to examine biological samples to determine surface character and material content. In addition, the instrument will be used for educational purposes in the course Introduction to Electron Microscopy. **Application received by Commissioner of Customs:** July 20, 1988.

Docket Number: 88-232. Applicant: University of Kentucky, Markey Cancer Center, 800 Rose Street, Lexington, KY 40536-0084. **Instrument:** Electron Microscope, Model H-7000. **Manufacturer:** Hitachi Scientific, Japan. **Intended use:** The instrument will be used to examine biological samples to determine surface character and material content. In addition, the instrument will be used for educational purposes in the course Introduction to Electron Microscopy. **Application received by Commissioner of Customs:** July 20, 1988.

Docket Number: 88-233. Applicant: Carnegie Mellon University, 5000 Forbes Avenue, Pittsburgh, PA 15213. **Instrument:** Electron Microscope, Model HB501. **Manufacturer:** VG Microscopes, Ltd., United Kingdom. **Intended use:** The instrument will be used for investigations of a large variety of specimens ranging from fine magnetic particles used in magnetic recording to thin films of magnetic material grown by molecular beam epitaxy. These investigations will be conducted to obtain a fundamental understanding of the magnetization of submicrometer

specimens near surfaces. **Application received by Commissioner of Customs:** July 22, 1988.

Docket Number: 88-234. Applicant: University of Kentucky, Department of Anatomy and Neurobiology, MS209 Medical Center, 800 Rose Street, Lexington, KY 40536-0084. **Instrument:** Scanning Electron Microscope, Model S-2300-1. **Manufacturer:** Hitachi Scientific, Japan. **Intended use:** The instrument will be used for studies of animal and human biological tissue that are under investigation in the determination of human disease related processes. The experiments are centered around the morphological basis for functional phenomena. The overall objectives of these studies are to determine the normal biological processes of the body that are involved in the cardiovascular, respiratory, reproductive and neural systems. An understanding of the mechanisms for these processes will enable fellow scientists to discover new treatments for many disease processes such as Alzheimer's, hypertension, sudden infant death syndrome and infertility. In addition, the instrument will be used in the course Anatomy 662 Ultrastructural Anatomy to acquaint the student with the theory and techniques of electron microscopy. **Application received by Commissioner of Customs:** July 25, 1988.

Docket Number: 88-235. Applicant: University of Pennsylvania, School of Medicine, Department of Anatomy, 37th and Hamilton Walk, Philadelphia, PA 19104-6058. **Instrument:** Electron Microscope, Model JEM-1200EX/SEG/DP/DP. **Manufacturer:** JEOL, Ltd., Japan. **Intended use:** The instrument will be used to study the ultrastructure of biological tissues, mainly the mammalian eye and brain. The objective of the studies is to determine the wiring of the neural circuits in order to relate these to neural function, particularly human vision. The instrument will also be used on a one-to-one basis in the training of medical, graduate students, residents and fellows. **Application received by Commissioner of Customs:** July 25, 1988.

Docket number: 88-236. Applicant: Baylor College of Medicine, Department of Biochemistry, One Baylor Plaza, Houston, TX 77030. **Instrument:** Electron Microscope, Model JEM-1200EX/SEG/DP/DP. **Manufacturer:** JEOL, Ltd. **Intended use:** The instrument will be used for studies of the following materials:

DNA from bacteriophage,
DNA helix destabilizing protein from T4 bacteriophage,

DNA helix destabilizing protein from *E. coli*,
RecA protein from *E. coli*,
Crotoxin complex protein from rattlesnake venom,
Tetanus toxin from bacterial cells,
Rotavirus.

High resolution images and diffraction patterns will be recorded from these protein molecules at different tilt angles with the electron microscope. In addition, the instrument will be used on a one-to-one basis in the training of medical, graduate students and residents. **Application received by Commissioner of Customs:** July 26, 1988.

Docket Number: 88-237. Applicant: Arizona State University, Tempe, AZ 85287. **Instrument:** Optical Microscope Stage System. **Manufacturer:** Autoscan Systems Pty. Ltd., Australia. **Intended use:** The instrument will be used for the study of fission-tracks in natural minerals and glasses to determine the uplift history of mountain ranges through the fission-track dating of apatite. **Application received by Commissioner of Customs:** July 26, 1988.

Docket Number: 88-240. Applicant: Research Foundation, State University of New York, Stony Brook, NY 11794. **Instrument:** Micromanipulator. **Manufacturer:** Narashige, Japan. **Intended use:** The instrument will be used for studying the physiology of muscle contraction in order to understand how muscle contracts from a molecular standpoint. **Application received by Commissioner of Customs:** July 27, 1988.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 88-18644 Filed 8-16-88; 8:45 am]
BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Accessory; Texas A&M Research Foundation

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-186. Applicant: Texas A & M Research Foundation, College Station, TX 77843. **Instrument:** Spectrascan Accessory, MG-3000. **Manufacturer:** Hi-Tech Scientific, United Kingdom. **Intended use:** See notice at 53 FR 20153, June 2, 1988. **Comments:** None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated July 21, 1988 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 88-18645 Filed 8-16-88; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Massachusetts, Amherst

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket number: 88-191. **Applicant:** University of Massachusetts, Amherst, MA 01003. **Instrument:** NMR Spectrometer, Model MSL-300. **Manufacturer:** Bruker Instruments, Inc., West German. **Intended use:** See notice at 53 FR 19983, June 1, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (June 23, 1987).

Reasons: The foreign instrument provides a microimaging and cross polarization magic angle spinning with high power multiple pulse decoupling capability. The capability is pertinent to the applicant's intended purpose and we know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being

manufactured at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 88-18646 Filed 8-16-88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Appointment of Members to General Performance Review Board

In a notice published in the *Federal Register* on April 22, 1988, (53 FR 13309), the National Bureau of Standards (NBS) announced the membership, terms, and purpose of the General Performance Review Board (GPRB).

This notice announces the following changes in the membership of the GPRB:

Dr. James E. Hill, Chief, Building Environment Division, National Engineering Laboratory, replaces Dr. Karl G. Kessler as Chair, GPRB. Dr. Hill's appointment will run until December 31, 1989.

Dr. Alvin H. Sher, Assistant Director for Management Information Technology, National Engineering Laboratory, replaces Dr. James E. Hill as a member of the GPRB. Dr. Sher's appointment will run until December 31, 1989.

Mr. Allen L. Hankinson, Chief, Systems and Software Technology Division, Institute for Computer Sciences and Technology, replaces Ms. Helen M. Wood. Mr. Hankinson's appointment will run until December 31, 1989.

Persons desiring any further information about the GPRB or its membership may contact Mrs. Elizabeth W. Stroud, Chief, Personnel Division, National Bureau of Standards, Gaithersburg, Maryland, 20899, telephone (301) 975-3000.

Date: August 11, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-18592 Filed 8-16-88; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Updating Prevailing Charges

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of intent to defer update of CHAMPUS prevailing charge levels for professional services.

SUMMARY: The Director of the Office of CHAMPUS intends to defer the update of CHAMPUS prevailing charge levels for professional services effective October 1, 1988. This will have the effect of maintaining the prevailing charge levels in effect for Fiscal Year 1988, which ends on September 30, 1988. This action will be taken only if the Medicare Economic Index (MEI) is not in place effective October 1, 1988 as a limit on growth in CHAMPUS prevailing charges. The deferral of the update will last for twelve months, or until the MEI becomes effective as a limit on growth in prevailing charges, whichever comes first.

This notice is published in accordance with 32 CFR 199.14(f)(1)(i)(B)(2).

DATES: Written comments must be received on or before September 16, 1988. Effective date for the intended action would be October 1, 1988.

ADDRESS: Send comments to Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the *Federal Register* containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the *Federal Register* is \$1.50 for each issue or for each group of pages as actually bound, payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Charles Gallegos, Chief, Office of Program Development, OCHAMPUS, telephone (303) 361-3005.

To obtain copies of this document, see the "Address" section above.

SUPPLEMENTARY INFORMATION: The Director of the Office of CHAMPUS intends to defer the update of CHAMPUS prevailing charge levels for professional services effective October 1, 1988. This will have the effect of maintaining the prevailing charge levels in effect for Fiscal Year 1988, which ends on September 30, 1988.

There are several reasons for implementing a deferral of the update of CHAMPUS prevailing charges for professional services. First, CHAMPUS costs have been rising at an alarming rate, resulting in Congressional calls for Department of Defense action to restrain costs. From fiscal year 1984 to 1987 CHAMPUS costs grew by over 70 percent, from \$1.2 billion to over \$2.1 billion. The professional services component has been growing faster than CHAMPUS as a whole, increasing by nearly 90 percent from 1984 to 1987. This

year professional services will account for about \$1 billion. DoD has taken a series of steps to gain some control over components of the CHAMPUS budget, most notably including the establishment of a Diagnosis Related Group (DRG)-based payment system and other payment method reforms affecting certain categories on institutional charges. To date, however, CHAMPUS has not yet implemented needed cost saving measures relating to professional fees.

Second, because CHAMPUS continues to pay for most professional fees on the basis of the physician's or other provider's billed charges, CHAMPUS allowable amounts are higher than necessary to assure fair payment to providers and broad access to care for beneficiaries. Part of the reasons for this is that CHAMPUS has not yet adopted some of the cost containment measures that have become popular with public and private payors. For example, beginning in 1974 under an Act of Congress, the Medicare program began restraining the rate of growth in professional fees by limiting increases to amounts justified by documented changes in physician office practice costs and general wage levels, these things being measured by the Medicare Economic Index (MEI). As an indication of the generosity of current CHAMPUS allowable relative to other payers, the CHAMPUS cost per professional visit grew by about 31 percent from 1984 to 1987, while the MEI grew by only 7.5 percent. Thus, it is most likely that the FY 1988 CHAMPUS physician payment levels (to be carried over in FY 1989) generally exceed those Medicare will be paying in FY 1989.

The third reason for implementing a deferral of allowable charge updates is that this can be accomplished without hardship to CHAMPUS beneficiaries. Under current procedures, the vast majority of all physicians' charges are paid exactly as billed. Because of this, there is almost no amount disallowed and almost no balance billing of the beneficiary. In total, about 93 percent of the total amount charged by physicians is allowed by CHAMPUS. Less than four percent of all dollars shown in billed charges are subject to balance billing. Because CHAMPUS payment rates are now so high, there is room for modest constraint without risk of a significant drop in assignment rates or an increase in balance billing.

For these three primary reasons, the Director of CHAMPUS, with the approval of the Assistant Secretary of Defense for Health Affairs, proposes to defer any allowable charge update for

fiscal year 1989. This proposal, however, is subject to change depending upon final Congressional action on the pending Defense Appropriations Act for Fiscal Year 1989. Congress is considering including in the Act a provision incorporating into CHAMPUS the MEI. This would limit growth in prevailing charges to the MEI amount.

If the MEI provision is enacted to be effective October 1, 1988, the deferral contemplated in this notice will not be undertaken. Absent adoption of the MEI prior to October 1, the intent is that the deferral will last for twelve months (or until the MEI provision might be adopted and become effective, whichever comes first).

To recap, the Department intends to defer the update of CHAMPUS prevailing charge levels for professional services effective October 1, 1988. This will have the effect of maintaining the prevailing charge levels in effect for Fiscal Year 1988, which ends on September 30, 1988. This notice is published to solicit public comment on this planned action. In accordance with 32 CFR 199.14(f)(1)(i)(B)(2), a final notice will be published prior to implementation of the action.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-18604 Filed 8-16-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 8-9 September 1988.

Time: 0800 to 1730 hours each day.

Place: General Dynamics, Pomona, CA.

Agenda: The Army Science Board Independent Assessment Panel (STINGER Missile) will meet to review eight taskers that were identified at the previous 30 June-1 July 1988 meeting. Discussions will include providing answers to RMP missile performance problems. This meeting will be closed to the public in accordance with section 552b(c) of Title 5 U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative

Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-18605 Filed 8-16-88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (EIS) for the Upper Bayou Teche, LA, Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a Draft EIS.

SUMMARY: This study will investigate water supply needs of the Teche-Vermilion Basins and will recommend a proposed action to satisfy those needs by increasing the fresh water supply to both lower Bayou Teche and the Vermilion River. Consideration will be given to the variation in water needs throughout the year and the competing demands for water.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action should be addressed to Stan Green, (504) 862-1486, and those regarding the Draft EIS should be addressed to Ken Froehlich, (504) 862-2508, U.S. Army Corps of Engineers, Planning Division (CELMN-PD-RE), P.O. Box 60267, New Orleans, Louisiana 70160-0267.

SUPPLEMENTARY INFORMATION:

1. Authority

This effort is being conducted as an interim study under the "Mermentau, Vermilion, and Calcasieu Rivers and Bayou Teche, Louisiana," study. Approval for the interim study was granted by the Corps of Engineers, Lower Mississippi Valley Division, by letter dated 9 August 1983.

2. Proposed Action

The proposed action consists of recommending a plan to increase the water supply to lower Bayou Teche and the Vermilion River. The plan will consider the alternatives described below. The Teche-Vermilion Basins water supply project, completed in 1982, supplements low flows in Bayou Teche and the Vermilion River with water pumped from the Atchafalaya River. Since project completion, full pumping capacity has not been attained due to inadequate flow capacity of Upper Bayou Teche. Inadequate fresh water supplies contribute to saltwater intrusion in the lower parts of the basin.

Saltwater intrusion in the agricultural water supply results in reduced yields to rice and crawfish farmers. Over 10,000 acres of rice and 12,000 acres of crawfish farms are affected by lack of fresh water.

3. Alternatives

The alternatives being considered are:

- (a) Channel improvements to Bayou Teche from Port Barre to Arnaudville,
- (b) channel improvements for West Atchafalaya Basin Protection Levee borrow pit and new channel cut, (c), a change in operating procedures for the Bayou Courtableau Drainage Structure,
- (d) No-action plan, which would involve a status-quo scenario whereby there be no change in Federally mandated operating procedures or Federal construction activities.

4. Scoping Process

a. Public input for scoping will be achieved through the distribution of a widely circulated Scoping Input Request to all segments of the public having an interest in the project. In addition, a news release will be issued to the local media. The notice and release will request submission of views on alternatives, significant resources in the study area, and any other project-related issue considered important.

b. A tentative list of significant issues to be discussed in the EIS includes: Agriculture, business and industrial activity, displacement of people and farms, employment, tax revenues, property values, public facilities and services, noise, housing, community cohesion, community facilities, endangered species, wildlife resources, fishery resources, forest resources, wildlife refuges and management areas, National Register sites, and other cultural and historical resources.

c. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report to accompany the EIS. Coordination will be maintained with the U.S. Fish and Wildlife Service on endangered species, and the Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. Coordination will be maintained with the State Historic Preservation Officer.

d. A 60-day public review period will be allowed so that all interested agencies and individuals have the opportunity to comment on the draft report and EIS.

5. Meeting Schedule

Public meetings for the specific purpose of scoping are not being considered. Comments received as a

result of the Scoping Input Request will be compiled and analyzed, and Scoping Document summarizing the results will be made available to all respondents.

6. Availability

The draft report and EIS are scheduled to be available to the public in July 1989.

Date: August 2, 1988.

Lloyd K. Brown,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-18638 Filed 8-16-88; 8:45 am]

BILLING CODE 3710-84-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Wilmington Harbor Passing Lane, New Hanover and Brunswick Counties, NC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The passing lane would consist of widening the existing 38-foot-deep by 400-foot-wide navigation channel in the Cape Fear River by 200 feet for a distance of up to 6 miles. The purposes of these improvements would be to provide sufficient widths so that large ships (with a beam in excess of 100 feet) can safely pass one another, to avoid major delays caused by inability to pass, and to enable ships to maintain speed while passing throughout the widened portion of the river.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and DEIS can be answered by: Mr. Frank Yelverton, Environmental Resources Branch, U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402-1890, telephone: (919) 343-4640.

SUPPLEMENTARY INFORMATION:

The DEIS is being prepared as a part of the feasibility study for the Wilmington Harbor Passing Lane and the feasibility study is being conducted under authority of section 107 of the River and Harbor Act of 1960, as amended. The proposed passing lane is to be located approximately midway between the ocean bar at the mouth of the Cape Fear River and the North Carolina State Ports Authority facilities. The length of the alternatives considered for the passing lane vary from 1.5 to 6 miles long. Preliminary analysis indicates that the most economical and environmentally sound method of dredging during construction and maintenance would be by bucket and barge; however, alternative dredging and disposal

methods, including beach disposal, will be discussed in the DEIS. Disposal of the dredged material by bucket and barge would be in the U.S. Environmental Protection Agency designated ocean dredged material disposal site approximately 4 miles southwest of the mouth of the Cape Fear River. The area to be dredged is generally greater than 15 to 20 feet deep at mean low water and in all cases is greater than 10 feet deep at mean low water.

All private interests and Federal, State, and local agencies having an interest in the study are hereby notified of the study and are invited to comment at this time. Also, a scoping letter requesting input to the study was sent to all known interested parties on July 6, 1988, and comments were requested by August 8, 1988. No scoping meeting is proposed. All comments received as a result of this notice of intent and the scoping letter will be considered in preparation of the DEIS.

Significant issues to be analyzed in the DEIS include: (1) Economic benefits of improvements, (2) acceptability of sediments for ocean disposal, (3) alternative dredging and disposal methods, (4) impacts to fishes and benthic resources, and (5) impacts to cultural resources.

The lead agency for this project is the Wilmington District, Corps of Engineers. Cooperating agency status has not been assigned to, or requested by, any other agency.

The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State laws and Executive Orders.

The DEIS is currently scheduled to be available in April 1990.

Dated: August 3, 1988.

Paul W. Woodbury,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-18639 Filed 8-16-88; 8:45 am]

BILLING CODE 3710-GN-M

DEPARTMENT OF ENERGY

Financial Assistance Award; University of Massachusetts at Amherst

AGENCY: Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: In accordance with 10 CFR 600.7(b), eligibility for award of a grant, resulting from Procurement Request No. 01-88EH79082.000, will be restricted to

the University of Massachusetts, at Amherst. The DOE is conducting negotiations with the University of Massachusetts, at Amherst for the support of a petroleum contaminated soils conference. These negotiations are expected to result in the issuance of Grant Number DE-FG01-88EH79082 in which the DOE will provide \$5,000 of the total estimated cost of \$167,000, for a performance period of twelve months, estimated to begin September 19, 1988.

Project Scope: The grant will provide assistance for one conference entitled, "Third Annual Conference on petroleum Contaminated Soils," that will provide technical experts a forum to improve their understanding of the sources, effects, controls, mitigations and reclamation of petroleum contaminated soils and groundwater. It will also give a forum to discuss rational scientifically defensible solutions to these problems as well as provide an understanding of the threats to human health and the environment.

The proposed grantee, The University of Massachusetts at Amherst and the conference organizer, Professor Paul T. Kostecki, Ph.D., are uniquely qualified to organize and conduct this conference. While other firms have expertise in petroleum contaminated soils, the University of Massachusetts at Amherst, is recognized as a leader in the area of determining health hazards associated with complex mixtures such as petroleum products as well as analytical techniques for determining petroleum products in the soil; has two past experiences putting on a national conference of this type and magnitude; has done extensive planning and coordination for this upcoming conference and has a working relationship with the foremost experts in the field.

FOR FURTHER INFORMATION CONTACT:

Stanley T. Colt, MA-453.1, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5645. Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88-18652 Filed 8-16-88; 8:45 am]

BILLING CODE 6450-01-M

**Financial Assistance Award;
(Cooperative Agreements);
Morgantown Energy Technology
Center**

AGENCY: Department of Energy (DOE).

ACTION: Notice of Noncompetitive Financial Assistance for Cooperative Agreements.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award additional funds to Cooperative Agreements with the University of North Dakota, Energy and Mineral Research Center (UNDEMRC), and the University of Wyoming Research Corporation's Western Research Institute (WRI).

The DOE has determined that award of additional funds on a noncompetitive basis to UNDEMRC and WRI is appropriate based on the following information:

The activities to be funded are continuations of existing research programs and associated funding profiles. The research programs are currently funded in Cooperative Agreements with UNDEMRC and WRI. In 1982 Congress authorized and directed the DOE to "defederalize" three Energy Technology Centers. The principal purpose of this direction was to increase the performance of fossil energy research by the private sector. Pursuant to the direction of Congress, DOE entered into Cooperative Agreements with UNDEMRC and WRI. The Cooperative Agreements effected the defederalization by divesting the DOE of the facilities at the former Grand Forks Energy Technology Center and the Laramie Energy Technology Center. The Agreements also provided DOE sponsorship and funding for UNDEMRC to continue research into more efficient and economical means by which low-ranked coal resources may be utilized and for WRI to perform research associated with gaseous and liquid hydrocarbon resources. It was the intent of the DOE, when entering into the agreements, that the Participants would obtain financial support above that provided by the Government. Accordingly, the funding profiles for each agreement are such that the Government's share of the cost of performance decreases each year. During the past three years most nonfederal organizations with fossil energy research interests have reduced their research efforts; consequently, UNDEMRC and WRI have not been able to obtain the anticipated nonfederal financial participation. The decreasing DOE funding of these research activities and the minimal support from other sources has endangered the Participants' ability to continue to perform the required research. The Government continues to have the mission of sponsoring energy related research in the areas of low-ranked coal utilization and liquid and gaseous hydrocarbon production. UNDEMRC and WRI have developed into key

organizations in the DOE's research programs. Therefore, in order to ensure the satisfactory continuation of the activities presently being funded by DOE, it has been determined that it is appropriate to award additional funds to UNDEMRC and WRI on a noncompetitive basis.

FOR FURTHER INFORMATION CONTACT:

L. Carol Roberson (107), U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4466.

Date: August 11, 1988.

Louie L. Calaway,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88-18653 Filed 8-16-88; 8:45 am]

BILLING CODE 6450-01-M

**Office of Conservation and
Renewable Energy**

AGENCY: Department of Energy.

ACTION: Notice of intent to fund research and development project.

SUMMARY: The Department of Energy (DOE), Oak Ridge Operations Office, intends to negotiate a contract with Champion International Corporation for "Development of a Black Liquor Pilot Gasifier for the Pulp and Paper Industry." based on an unsolicited proposal. Champion International and its subcontractor, Rockwell International Corporation, have conducted research and development in black liquor gasification since 1981. A gasifier producing gas for use in combined-cycle cogeneration shows high potential as an alternative to the Tomlinson Recovery Boiler. The unsolicited proposal is for a 15 tons per day unit which, when tested, could culminate in the building of a larger pilot unit at a pulp and paper mill site.

The proposed effort is to be partially funded in Fiscal Year 1988. Completion of the 15 tons per day phase will be subject to availability of funds in later years. The proposed effort, involving an estimated 11.4 man-years, is to be completed within a 27-month time period from start of the contract.

This notification provides an opportunity for pulp and paper companies, and equipment manufacturers, to consider participation in funding the 15 TPD pilot unit. DOE feels that the gasifier project could provide significant benefits for paper-makers and equipment manufacturers and should be continued to commercialization. This notice

represents the only official notice of intent on the part of DOE.

ADDRESS: Request for information regarding the proposed contract and written responses to this notice shall be addressed to:

U.S. Department of Energy, Office of Industrial Programs, CE-142, Room 5F-044, 1000 Independence Avenue, SW., Washington, DC 20585.

ATTN: Mr. S.F. Sobczynski, Program Manager

DATES: This notice is effective until September 16, 1988. DOE will evaluate and take appropriate action on each response received prior to and on this date, and may extend the effective period depending on the results of responses received.

Issued at Washington, DC, on August 4, 1988.

Donna R. Fitzpatrick,
Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 88-18654 Filed 8-16-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-576-000, et al.]

Indeck Gas Supply Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Indeck Gas Supply Corporation.

[Docket No. CP88-576-000]

August 9, 1988.

Take notice that on July 13, 1988, Indeck Gas Supply Corporation (Indeck), an Illinois corporation, whose mailing address is 1111 South Willis Avenue, Wheeling, Illinois 60090, filed in Docket No. CP88-576-000 an application pursuant to section 3 of the Natural Gas Act (NGA), §§ 153.10-153.111 of the Commission's Regulations, and Executive Order No. 10485, as amended by Executive Order No. 12038, and Delegation Order No. 0204-112 of the Secretary of Energy, requesting a Presidential Permit and other authorization under section 3 of the NGA as may be required for the siting, construction, operation, maintenance and connection of facilities at the international border between the United States and Canada, all as more fully set forth in the application on file with the Commission and open to public inspection.

Indeck states that the proposed pipeline facilities (the Indeck Import facility) would consist of approximately two miles of 16-inch pipe. It is stated

that the proposed facility would extend from a point at the international border under the Niagara River near Lewiston, New York, where it would interconnect with the facilities of TransCanada Pipeline Limited (TCPL), where it would then interconnect with the proposed facilities of National Fuel Gas Supply Corporation (National Fuel).

Indeck states it is concurrently filing an application with the Economic Regulatory Administration (ERA) requesting authorization to import, over the 15-year period, 11 Bcf of Canadian gas. It is further stated that all the imported gas would be delivered to and consumed by three gas fired cogeneration projects to be constructed, owned and operated by affiliates of Indeck in Tonawanda, Silver Springs and Ilion, New York.

Indeck states that the imported gas would be purchased at the wellhead and transported in Canada through the facilities of TCPL. It is explained that upon receipt of the imported gas from TCPL, Indeck would transport the gas through the proposed Indeck Import Facility and deliver it to National Fuel. It is stated that National Fuel would then transport the gas to an interconnection with the local distribution facilities of National Fuel Gas Distribution Company (Distribution) for redelivery to the Indeck-Yerkes project in Tonawanda, New York. It is stated that National Fuel would also transport the gas to two points of interconnection with the facilities of CNG Transmission Corporation (CNG) for transportation to the remaining two Indeck Cogeneration projects located in Silver Springs and Ilion, New York. Indeck states that National Fuel, CNG, and Distribution have expressed willingness to provide these transportation services on a firm basis. Furthermore, Indeck states that it would prepare and file with the U.S. Army Corps of Engineers an application for a river crossing permit and for any necessary authorizations from the State of New York.

Comment date: August 30, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-658-000]

August 9, 1988.

Take notice that on August 3, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251 filed in Docket No. CP88-658-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to

transport natural gas under the blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to transport natural gas for Transco Energy Marketing Company (TEMCO), a marketer, pursuant to a transportation agreement dated June 1, 1988. Transco explains that service commenced June 8, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4945-000. Transco further explains that the peak day quantity would be 285,000 dekatherms, the average daily quantity would be 285,000 dekatherms, and that the annual quantity would be 104,025,000 dekatherms. Transco explains that it would receive natural gas for TEMCO's account at points of receipt in Pennsylvania, New Jersey, Alabama, Georgia, Texas, Louisiana, offshore Louisiana and offshore Texas and would redeliver natural gas for TEMCO's account to Florida Gas Transmission Company at Vinton, Calcasieu Parish, Louisiana and East White Lake Field, Vermilion Parish, Louisiana.

Comment date: September 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88-629-000]

August 9, 1988.

Take notice that on July 26, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-629-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service for CSX NGL Corporation (CSX), an end-user, under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated July 1, 1988, it proposes to transport on an interruptible basis, up to 50,000 dekatherms of natural gas for CSX from various receipt points located offshore Louisiana, as more fully described in the request, to an interconnection between Tennessee and Texas Gas Transmission Corporation located at Egan, Acadia Parish, Louisiana, for use at CSX' Eunice Plant.

Applicant also states that no construction of facilities will be required to provide the transportation service.

The Applicant further states that the peak day quantities would be 50,000 dekatherms, the average daily quantities would be 2,967 dekatherms, and the annual quantities would be 1,086,240 dekatherms. Applicant avers that service under Section 284.223(a) commenced July 7, 1988, as reported in Docket No. ST88-4792 (filed July 19, 1988).

Comment date: September 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Williston Basin Interstate Pipeline Company

[Docket No. CP88-647-000]

August 9, 1988.

Take notice that on August 1, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suit 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP88-647-000 a request, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a sales tap and appurtenant facilities under its blanket certificate authorization issued in Docket Nos. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to abandon a sales tap located on its Elk Basin to Billings Red Line in Yellowstone County, Montana. It is stated that the customer, Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc., no longer requires service through this tap because the retail customer previously receiving service through this tap is no longer in business. Williston Basin further states that since the sales tap will be abandoned on its existing transmission right-of-way, there will be no significant adverse impact on the environment.

Comment date: September 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Colorado Interstate Gas Company

[Docket No. CP88-643-000]

August 9, 1988.

Take notice that on July 28, 1988, as supplemented on August 3, 1988, Colorado Interstate Gas Company, (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP88-643-000 a certificate application pursuant to section 7(c) of the Natural Gas Act and in compliance with a Commission letter order issued

July 15, 1988, in Docket No. RP87-74-000 for authority for a sales standby service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, CIG requests certificate authority for an elective daily sales standby service for its customers purchasing gas under certain of its Original Volume No. 1 Tariff firm sales rate schedules. CIG indicates that the authority is requested in compliance with and pursuant to the Commission's July 15, 1988, letter order in Docket No. RP87-74-000 in which an uncontested offer of settlement related to the service was approved.

CIG proposes to charge for the service an initial rate equal to the difference between the non-gas fixed cost embodied in CIG's sales commodity rate and the maximum firm transportation commodity charge. CIG indicates that the sales standby charge as provided by the settlement offer is currently 38.91 cents per Mcf, subject to adjustment based upon the outcome of Docket No. RP87-30. CIG also indicates that inasmuch as the customer is already paying for the firm system capacity, the reservation fee, otherwise applicable to firm transportation service, is waived.

CIG requests that the certificate authority be made effective on July 14, 1987, in conformity with (1) the Commission's order issued July 15, 1987, in Docket No. RP87-74-000 wherein the Commission accepted CIG's tariff filing to initiate a sales standby service and charge effective July 14, 1987, and (2) the stipulation and agreement, and related letter order issued July 15, 1988, wherein CIG proposed and the Commission approved establishment of sales standby rates effective July 14, 1987.

Comment date: August 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. K N Energy, Inc.

[Docket No. CP88-649-000]

August 10, 1988.

Take notice that on August 1, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP88-649-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act for authorization to redistribute volumes of gas delivered to Northwestern Public Service Company (Northwestern) among three existing delivery points under the certification issued in Docket No. CP83-140-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the

Commission and open to public inspection.

K N proposes to redistribute Northwestern's Winter Period Service demand volumes by reassigning all of these volumes presently delivered to the North Platte delivery point (3222 Mcf) to the Grand Island delivery point and the Kearney delivery point. It is stated that the volumes delivered to the Grand Island delivery point would be increased from 2100 Mcf to 3711 Mcf (1611 Mcf increase) and that the volumes delivered to the Kearney delivery point would be increased from 2843 Mcf to 4454 Mcf (1611 Mcf increase).

K N states that no change in Northwestern's total authorized volumes would result from the proposed reassignment. K N further states that the proposed reassignments would have no material impact on K N's peak day and annual deliveries.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP88-645-000]

August 10, 1988.

Take notice that on July 29, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-645-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct one delivery point and appurtenant facilities to accommodate natural gas deliveries to Michigan Gas Company (MGC) under its blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that MGC has requested that Northern construct one small delivery point to accommodate Natural gas deliveries to the community of Bruce Crossing, Michigan to be served by MGC. Northern further states that the estimated peak day and annual volumes to be delivered to MGC at the delivery point to be located in Ontonagon County, Michigan, would be 134 Mcf and 20,028 Mcf, respectively.

Northern indicates that the volumes to be delivered to MGC at the proposed delivery point would be within its currently authorized firm entitlement, as authorized by Commission order issued on November 9, 1987, in Docket No. RP85-206-11 through RP85-206-27, and

would, therefore, have no impact on Northern's peak day and annual deliveries. Northern further indicates that the required volumes would be served from the firm entitlement currently designated by MGC for delivery to Ontonagon, Michigan.

Northern states that the total estimated cost to construct the proposed delivery point would be \$6,280.00 and that MGC would not be required to contribute in aid of construction.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-657-000]

August 10, 1988.

Take notice that on August 3, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-657-000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Placid Oil Company (Placid), under the certificate issued in Docket No. CP88-328-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Transco states that it proposes to transport natural gas from a point of receipt located in High Island Block 232, Offshore Texas to its Johnsons Bayou delivery point.

Transco further states that the maximum daily and annual quantities that it would transport for Placid would be 25,000 dt equivalent and 8,577,500 dt equivalent, respectively.

Transco indicates that in Docket No. ST88-4822 it reported that transportation service for Placid commenced under the 120-day automatic authorization provisions of § 284.233(a).

It is stated in the application that Transco would construct no new facilities to provide the proposed service, but that Placid would construct a meter station and appurtenant facilities in High Island Block 232, Offshore Texas at an estimated cost of \$2,100,000 to interconnect with

Transco's 12-inch diameter pipeline in High Island Block 232, Offshore Texas.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Border Pipeline Company

[Docket No. CP88-652-000]

August 10, 1988.

Take notice that on August 2, 1988, as supplemented August 8, 1988, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-652-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate certain measurement appurtenances in order to increase the capacity of the Welcome Meter Station (Welcome) located in Martin County, Minnesota, under the authorization issued Docket No. CP84-420-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern Border proposes to install an additional filter/separator and install gas heating equipment with larger capacity. It is asserted that the proposed modifications would increase the delivery capability by Northern Border to Northern Natural Gas Company, Division of Enron Corp's (Northern Natural) system at Welcome from 125,000 Mcf/d to 175,000 Mcf/d.

Northern Border alleges that the increased capacity at Welcome would enhance the operational flexibility of Northern Natural's system, increase the delivery of natural gas in Northern Natural's market area, and reduce fuel consumption on Northern Natural's system. It is stated that Northern Border is authorized to transport and deliver at Welcome on a firm basis up to 75,000 Mcf/d for Northern Natural and up to 125,000 Mcf/d for United Gas Pipe Line Company (United). It is further stated that Northern Natural and United's natural gas volumes delivered at Welcome are those, among others, which Northern Border was authorized to transport by the Commission at Docket No. CP78-124-000, (10 FERC ¶ 61,032) as amended.¹ It is asserted that Northern Border was authorized by Commission order dated January 17, 1986, in Docket No. CP86-144-000, (34 FERC ¶ 61,142) to among other things,

deliver up to 125,000 Mcf/d at Welcome for the account of United. It is alleged that Northern Border is requesting authority to increase the operational capacity of the Welcome station and not the certificated levels that it deliveries to Northern Natural, United, and others at the station.

It is stated that the cost of the proposed facility modification is estimated to be \$258,950. It is further stated that Northern Natural would pay all the costs associated with the project.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP88-635-000*; CP88-636-000; CP88-637-000; CP88-638-000; CP88-639-000; CP88-640-000; CP88-641-000]

*These requests are not consolidated. August 10, 1988.

Take notice that on July 28, 1988, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-635-000, *et al.*, requests pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for various customers under Applicant's certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests which are on file with the Commission and open for public inspection.

Applicant proposes to transport, on an interruptible basis, natural gas for specified customers, as noted in the Appendix hereto. It is stated that transportation agreements between the parties provide for Applicant to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, Illinois, Louisiana, offshore Texas, offshore Louisiana and Canada. It is further stated that Applicant would then transport and deliver the gas, less fuel used and unaccounted-for line losses. Applicant states that each service has commenced in accordance with § 284.223(a) of the Regulations. Applicant states that no new facilities nor expansion of existing facilities are required to provide the proposed service.

Comment date: September 26, 1988, in accordance with standard Paragraph G at the end of this notice.

¹ See orders issued April 28, 1980, (11 FERC ¶ 61,088) April 24, 1981, (15 FERC ¶ 61,073) and December 14, 1984 (29 FERC ¶ 61,301).

APPENDIX

Docket No. CP88—	Filed	Customer	Redelivery point	Interruptible transportation		Annual	Docket No. ¹ ST88—
				Peak (dt/ d)	Average (dt/d)		
635-000.....	7/28/88	Archer Daniels Midland Company (shipper/end-user).	Illinois Power Company, Knox County, IL.....	1,200	2 800	2 292,000	4562
636-000.....	7/28/88	Loutex Energy Inc. (marketer).....	Columbia Gas Transmission Corporation, Darke and Lucas Counties, OH.	50,000	2 20,000	2 7,300,000	4442
637-000.....	7/28/88	Reed Minerals Division, Harsco Corporation (shipper/end-user).	Gas Service Company, Miami County, KS.....	1,000	2 80	2 29,200	4527
638-000.....	7/28/88	Mobil Oil Corporation (producer).....	General Motors, Defiance County, OH.....	15,000	2 12,000	2 4,380,000	4560
639-000.....	7/28/88	Unicorp Energy, Inc. (marketer).....	(1) Michigan Gas Storage, Oakland County, MI and. (2) Trunkline Gas Company, Douglas County, IL.	100,000	2 30,000	2 10,000,000	4561
640-000.....	7/28/88	Gulf Energy Marketing Company (marketer).	Columbia Gas Transmission Corporation, Darke and Lucas Counties, OH.	100,000	2 40,000	2 14,600,000	4441
641-000.....	7/28/88	Mobil Oil Corporation (producer).....	General Motors, Vermilion County, IL.....	15,000	2 12,000	2 4,380,000	4558

¹ Report of service under Section 284.223(a) of the Regulations.

² Average day and annual volumes are based upon shipper's estimates. The actual volumes are dependent upon the shipper's requirements.

11. United Gas Pipeline Company

[Docket No. CP88-653-000]

August 10, 1988.

Take notice that on August 1, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-653-000, a request for authorization pursuant to §§ 157.205 and 157.216(b) of the Regulations under the Natural Gas Act, and United's blanket certificate issued in Docket No. CP88-430-000, for authorization to abandon sales service and facilities to Texas Eastern Products Pipeline Company (Texas Eastern), a direct industrial customer, at the following locations:

Location	Contract expiration date	Service authorized in Docket No.
Sarepta Pump Station, Webster Parish, Louisiana.....	12/1/84	G-232
Carthage Oil Terminal, Panola County, Texas.....	12/1/84	G-232

United states that the sales contracts

have expired and that Texas Eastern has consented to the proposed abandonments. United further states that the abandonments will be accomplished without detriment or disadvantage to its other existing customers. It is stated that the total cost of removing the facilities is estimated at \$5,000.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Pipeline Corporation

[Docket Nos. CP88-611-000; * CP88-612-000; CP88-613-000; CP88-614-000; CP88-615-000; CP88-616-000; CP88-617-000; CP88-618-000; CP88-619-000; and CP88-624-000]

* These application are not consolidated. August 10, 1988.

Take notice that on July 21, 1988, and July 22, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed to the Docket Nos. CP88-611-000, *et al.*, permission and approval to abandon or partially abandon firm sales entitlement to ten customers, all as more fully set forth in the applications on file with the

Commission and open to public inspection.¹

Northwest states that pursuant to § 284.10 of the Commission's Regulations, the customers, as noted in the Appendix hereto, converted firm sales entitlements under their respective service agreements to firm transportation under Northwestern's Rate Schedule TF-1. Northwest states that it now requests to abandon or partially abandon firm sales entitlement to each customer associated with the reductions in firm sales service to be effective as of the dates noted on the Appendix. Northwest states that, pursuant to § 284.10(f)(2), the exercise of contract conversion rights by a firm sales customer under Section 284.10(d) constitutes consent by that customer to the abandonment of sales service to the extent of the conversion.

Comment date: August 31, 1988, in accordance with Standard Paragraph F at the end of this notice.

¹ See attached Appendix for details of each application, including customer name, rate schedule, revised sales entitlement, etc.

APPENDIX

Docket No. CP88—	Filed	Customer	Rate schedule	Firm sales entitlement (MMBtu/d)			Effective date of reduction
				Current	Reduction	Revised	
611-000.....	7/21/88	CP National Corporation.....	ODL-1	30,871	23,871.0	7,000.0	7/1/88
612-000.....	7/21/88	The Washington Water Power Company.....	ODL-1	133,270	73,270.0	60,000.0	7/1/88
613-000.....	7/21/88	City of Ellensburg, Washington.....	DS-1	6,000	1,500.0	4,500.0	7/1/88
614-000.....	7/21/88	Southwest Gas Corporation.....	ODL-1	126,563	106,563.0	20,000.0	7/1/88

APPENDIX—Continued

Docket No. CP88—	Filed	Customer	Rate schedule	Firm sales entitlement (MMBtu/d)			Effective date of reduction
				Current	Reduction	Revised	
615-000.....	7/21/88	Questar Pipeline Company and Colorado Interstate Gas Company.....	PL-1 PL-1	80,041 160,077	80,041.0 160,077.0		7/1/88 7/1/88
616-000.....	7/21/88	Cascade Natural Gas Corporation.....	ODL-1	206,123	144,523.0	61,600.0	7/1/88
617-000.....	7/21/88	Washington Natural Gas Company.....	ODL-1	306,733	156,733.0	150,000.0	7/1/88
618-000.....	7/21/88	Intermountain Gas Company.....	ODL-1	113,024	112,924.0	100.0	7/1/88
619-000.....	7/21/88	Utah Gas Service Company.....	DS-1	6,433	5,146.0	1,287.0	7/1/88
624-000.....	7/22/88	Northwest Natural Gas Company.....	ODL-1	286,044	85,810.3	200,233.7	7/1/88

13. United Gas Pipe Line Company

[Docket No. CP88-655-000]

August 10, 1988.

Take notice that on August 1, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-655-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon a natural gas transportation service for Florida Gas Transmission Company (Florida Gas) authorized by Commission order on December 15, 1978 in Docket No. CP87-498, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that pursuant to the Commission order it is authorized to transport up to 25,000 Mcf of natural gas per day for Florida Gas under a gas transportation agreement dated August 16, 1978, from a point on United's ten-inch diameter Bogolusa lateral in Jefferson Davis County, Mississippi to various existing interconnections between the systems of United and Florida Gas in St. Landry Parish, Louisiana, St. Helena Parish, Louisiana, and Stone County, Mississippi.

United indicates that the gas transportation agreement was cancelled on May 4, 1988, and that it has given Florida Gas written notice terminating such service in accordance with the terms of the agreement.

Comment date: August 31, 1988, in accordance with Standard Paragraph F at the end of this notice.

14. Panhandle Eastern Pipe Line Company

[Docket No. CP88-648-000]

August 12, 1988.

Take notice that on August 1, 1988, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-648-000, a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service to

Gulf Energy Marketing Company (Gulf Energy), a marketer, under Panhandle's blanket transportation certificate issued November 20, 1987, in Docket No. CP86-585-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to transport for Gulf Energy up to 100,000 dt of natural gas per day or approximately 14,600,000 dt of natural gas annually, pursuant to a transportation agreement dated May 4, 1988. Panhandle states that the transportation service for Gulf Energy commenced June 1, 1988, under the 120-day automatic authorization provisions of § 284.223(a). Panhandle states that it notified the Commission of the commencement of the transportation service in Docket No. ST88-4441.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held

without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18624 Filed 8-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-131-003]

Carnegie Natural Gas Co.; Compliance Filing

August 11, 1988.

Take notice that on August 5, 1988, Carnegie Natural Gas Company (Carnegie) tendered for filing certain revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet No. 94a
Second Revised Sheet No. 104
Second Revised Sheet No. 121
Second Revised Sheet No. 126

Carnegie states that these tariff sheets are filed in compliance with a Letter Order dated July 15, 1988. The proposed effective date is June 2, 1988.

Carnegie states First Revised Sheet No. 94a is being filed to state that Original Sheet 94a is superseded by Substitute Second Revised Sheet Nos. 93 and 94. Second Revised Sheet No. 121 is filed to delete the processing fee requirement from Carnegie's interruptible transportation rate schedule, § 3.1. Second Revised Sheet Nos. 104 and 126 are filed to reduce the penalty for excess deliveries during gas supply curtailment and to provide for notification of the imbalance.

Carnegie states that the filing was served on parties to Docket No. RP88-131-000 and each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-18618 Filed 8-16-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-126-001]

Colorado Interstate Gas Co., Compliance Filing

August 11, 1988.

Take notice that on August 5, 1988, Colorado Interstate Gas Company (CIG) filed Substitute Third Revised Sheet No. 60 and Substitute Fifth Revised Sheet No. 61 to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1988.

CIG states that this filing is in compliance with the Director Letter Order of July 8, 1988 and the proposed tariff changes affect Section 21 of the

General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

CIG states that copies of this filing have been served upon its jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-18622 Filed 8-16-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-224-001]

Freeport Interstate Pipeline Co.; Filing

August 11, 1988.

Take notice that on August 4, 1988, Freeport Interstate Pipeline Company (Freeport) filed Substitute Original Sheet No. 6 and Substitute Original Sheet No. 50 to its FERC Gas Tariff, Original Volume No. 1, to be effective February 6, 1988.

Freeport states that the purpose of this filing is to correct typographical errors on Original Sheet Nos. 6 and 50, which were previously filed on July 29, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-18619 Filed 8-16-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ST88-4010-000, et al.]

Exxon Gas System, Inc., et al.; Self-Implementing Transactions

August 10, 1988.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).¹

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicate the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and § 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before August 31, 1988.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested persons may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

¹ Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222

and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under

§ 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Cashell,
Acting Secretary.

Docket No. ¹ and transporter/seller	Recipient	Date filed	Sub-part	Expiration date ²	Transportation rate (cents per MMBtu)
ST88-4010 Exxon Gas System, Inc.	Transco Gas Pipe Line Corp., et al.	6-01-88	C	10-29-88	10.00
ST88-4011 Northern Natural Gas Co.	Adobe Gas Co.	6-01-88	B		
ST88-4012 Northern Natural Gas Co.	Tejas Power Corp.	6-01-88	G-S		
ST88-4013 Northern Natural Gas Co.	Northern Minnesota Utilities	6-01-88	B		
ST88-4014 Taft Pipeline Co.		6-01-88	C	10-29-88	10.00
ST88-4015 CNG Transmission Corp.	Phoenix Kdiversified Ventures, Inc.	6-01-88	B		
ST88-4016 Texas Eastern Transmission Corp.	Pointe Coupee Parish	6-01-88	B		
ST88-4017 Transok, Inc.	Natural Gas Pipeline Co. Of America	6-01-88	C	10-29-88	37.13
ST88-4018 Transcontinental Gas Pipe Line Corp.	Elizabethtown Gas Co.	6-01-88	B		
ST88-4019 Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.	6-01-88	B		
ST88-4020 Carnegie Natural Gas Co.	Columbia Gas of Pennsylvania, Inc.	6-02-88	B		
ST88-4021 Tarpon Transmission	Tejas Power Corp.	6-02-88	G-S		
ST88-4022 Tennessee Gas Pipeline Co.	Orange and Rockland Utilities, Inc.	6-02-88	B		
ST88-4023 Tennessee Gas Pipeline Co.	Nashville Gas Co.	6-02-88	B		
ST88-4024 Colorado Interstate Gas Co.	Llano, Inc.	6-02-88	B		
ST88-4025 Colorado Interstate Gas Co.	Southern California Gas Co.	6-02-88	B		
ST88-4026 Colorado Interstate Gas Co.	Iowa-Illinois Gas & Electric Co.	6-02-88	B		
ST88-4027 Transcontinental Gas Pipe Line Corp.	City of Shelby	6-02-88	B		
ST88-4028 Transcontinental Gas Pipe Line Corp.	City of Shelby	6-02-88	B		
ST88-4029 Transcontinental Gas Pipe Line Corp.	Humble Gas System, Inc., et al.	6-02-88	B		
ST88-4030 Transcontinental Gas Pipe Line Corp.	Long Island Lighting Co.	6-02-88	B		
ST88-4031 Transcontinental Gas Pipe Line Corp.	North Carolina Natural Gas Corp.	6-02-88	B		
ST88-4032 Transok, Inc.		6-02-88	C	10-30-88	32.50
ST88-4033 Colorado Interstate Gas Co.	Pacific Gas and Electric Co.	6-02-88	B		
ST88-4034 Colorado Interstate Gas Co.	Peoples Natural Gas Co.	6-02-88	B		
ST88-4035 Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	6-02-88	B		
ST88-4036 Texas Eastern Transmission Corp.	American Distribution Co., Inc.	6-03-88	B		
ST88-4037 Texas Eastern Transmission Corp.	Central Illinois Public Service Co.	6-03-88	B		
ST88-4038 Texas Eastern Transmission Corp.	National Gas and Oil Corp.	6-03-88	B		
ST88-4039 Texas Eastern Transmission Corp.	East Ohio Gas Co.	6-03-88	B		
ST88-4040 Texas Eastern Transmission Corp.	Boston Gas Co.	6-03-88	B		
ST88-4041 El Paso Natural Gas Co.	Gas Co. of NM (Div. Public Serv. Co. NM)	6-03-88	B		
ST88-4042 El Paso Natural Gas Co.	Gas Co. of NM (Div. Public Serv. Co. NM)	6-03-88	B		
ST88-4043 Webb/Duval Gatherers	Transcontinental Gas Pipe Line Corp.	6-03-88	C		
ST88-4044 Texas Gas Transmission Corp.	Memphis Light, Gas and Water Division	6-03-88	B		
ST88-4045 Texas Gas Transmission Corp.	City of Henderson	6-03-88	B		
ST88-4046 Texas Gas Transmission Corp.	City of Hamilton	6-03-88	B		
ST88-4047 Texas Gas Transmission Corp.	Ohio Valley Gas Corp.	6-03-88	B		
ST88-4048 Texas Gas Transmission Corp.	Louisiana Resources Co.	6-03-88	B		
ST88-4049 Texas Gas Transmission Corp.	Carrollton Utilities	6-03-88	B		
ST88-4050 Texas Gas Transmission Corp.	Ohio Valley Gas Corp.	6-03-88	B		
ST88-4051 Texas Gas Transmission Corp.	Mississippi Valley Gas Co.	6-03-88	B		
ST88-4052 Texas Gas Transmission Corp.	Indiana Utilities Corp.	6-03-88	B		
ST88-4053 CNG Transmission Co.	Natural Gas Pipeline Co. of America	6-06-88	C	11-03-88	24.32
ST88-4054 Valero Transmission, L.P.	Transcontinental Gas Pipe Line Corp.	6-06-88	C		
ST88-4055 Valero Transmission, L.P.	El Paso Natural Gas Co.	6-06-88	C		
ST88-4056 Valero Transmission, L.P.	Trunkline Gas Co.	6-06-88	C		
ST88-4057 Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	6-06-88	C		
ST88-4058 Tennessee Gas Pipeline Co.	Natural Gas Clearing, Intra. Pipeline Co.	6-06-88	B		
ST88-4059 Tennessee Gas Pipeline Co.	Algonquin Gas Transmission Co.	6-06-88	G		
ST88-4060 Tennessee Gas Pipeline Co.	East Ohio Gas Co., et al.	6-06-88	BD		
ST88-4061 Delhi Gas Pipeline Co.	Northern Natural Gas Co.	6-06-88	C	11-03-88	35.00
ST88-4062 Exxon Gas System, Inc.	Northern Natural Gas Co.	6-03-88	C	10-31-88	12.50
ST88-4063 Exxon Gas System, Inc.	Texas Eastern Transmission Corp.	6-06-88	C	11-03-88	7.50
ST88-4064 Exxon Gas System, Inc.	Northern Natural Gas Co.	6-06-88	C	11-03-88	12.80
ST88-4065 Natural Gas Pipeline Co. of America	Union Electric Co.	6-06-88	B		
ST88-4066 Natural Gas Pipeline Co. of America	Chevron U.S.A.	6-06-88	G-S		
ST88-4067 Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co.	6-06-88	B		
ST88-4068 Natural Gas Pipeline Co. of America	Valero Transmission, L.P.	6-06-88	B		
ST88-4069 Transcontinental Gas Pipe Line Corp.	N. Carolina Natural Gas Corp.	6-03-88	B		
ST88-4070 Transcontinental Gas Pipe Line Corp.	Piedmont Natural Gas Co.	6-03-88	B		
ST88-4071 Transcontinental Gas Pipe Line Corp.	Public Service Co. of N. Carolina	6-03-88	B		
ST88-4072 Transcontinental Gas Pipe Line Corp.	Commission of Public Works, Greenwood	6-03-88	B		
ST88-4073 Tennessee Gas Pipeline Co.	Bishop Pipeline Corp.	6-03-88	B		
ST88-4074 Colorado Interstate Gas Co.	Southern California Gas Co.	6-03-88	B		

Docket No. ¹ and transporter/seller	Recipient	Date filed	Sub-part	Expiration date ²	Transportation rate (cents per MMBtu)
ST88-4075 Panhandle Eastern Pipe Line Co.	Kansas Gas Supply Corp.	6-03-77	B		
ST88-4076 Truckline Gas Co.	Consumers Power Co.	6-03-88	B		
ST88-4077 Truckline Gas Co.	Consumers Power Co.	6-03-88	B		
ST88-4078 Truckline Gas Co.	Yankee Pipeline Co.	6-03-88	B		
ST88-4079 Truckline Gas Co.	Bishop Pipeline Corp.	6-03-88	B		
ST88-4080 Truckline Gas Co.	Access Energy Pipeline Corp.	6-03-88	B		
ST88-4081 Truckline Gas Co.	Access Energy Pipeline Corp.	6-06-88	B		
ST88-4082 Texas Corp.	Northern Natural Gas Co.	6-06-88	C		
ST88-4083 United Gas Pipe Line Co.	Bridgeline Gas Distribution Co.	6-06-88	B		
ST88-4084 United Gas Pipe Line Co.	Amalgamated Pipeline Co.	6-06-88	B		
ST88-4085 United Gas Pipe Line Co.	Amalgamated Pipeline Co.	6-06-88	B		
ST88-4086 El Paso Natural Gas Co.	Gas Co. of NM (Div. Public Serv. Co. NM)	6-07-88	B		
ST88-4087 Transcontinental Gas Pipe Line Corp.	Houston Pipe Line Co.	6-06-88	B		
ST88-4088 Transcontinental Gas Pipe Line Corp.	North Carolina Natural Gas Corp.	6-06-88	B		
ST88-4089 Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.	6-06-88	B		
ST88-4090 Trunkline Gas Co.	Central Illinois Public Service Co.	6-03-88	B		
ST88-4091 Sea Robin Pipeline Co.	Baltimore Gas & Elect. Co., et al.	6-07-88	B		
ST88-4092 United Gas Pipe Line Co.	Mississippi Fuel Co.	6-07-88	B		
ST88-4093 United Gas Pipe Line Co.	Jala Pipeline Corp.	6-07-88	B		
ST88-4094 United Gas Pipe Line Co.	Louisiana State Gas Corp.	6-07-88	B		
ST88-4095 United Gas Pipe Line Co.	Houston Pipe Line Co.	6-07-88	B		
ST88-4096 United Gas Pipe Line Co.	Bridgeline Gas Distribution Co.	6-07-88	B		
ST88-4097 Columbia Gulf Transmission Co.	Columbia Gas Transmission Corp.	6-07-88	G		
ST88-4098 Columbia Gulf Transmission Co.	Nashville Gas Co.	6-07-88	B		
ST88-4099 Columbia Gulf Transmission Co.	Exxon Corp.	6-07-88	G-S		
ST88-4100 Columbia Gulf Transmission Co.	Shreveport Intrastate Gas Trans., Inc.	6-07-88	B		
ST88-4101 Columbia Gulf Transmission Co.	Peoples Natural Gas Co.	6-07-88	B		
ST88-4102 Columbia Gulf Transmission Co.	Virginia Natural Gas Co.	6-07-88	B		
ST88-4103 Columbia Gulf Transmission Co.	Alabama-Tennessee Natural Gas Co.	6-07-88	B		
ST88-4104 Colorado Interstate Gas Co.	Quivira Gas Co.	6-08-88	B		
ST88-4105 CNG Transmission Corp.	Bishop Pipeline Corp.	6-08-88	G-S		
ST88-4106 CNG Transmission Corp.	Industrial Energy Services Co.	6-08-88	G-S		
ST88-4107 CNG Transmission Corp.	PSI, Inc.	6-08-88	G-S		
ST88-4108 CNG Transmission Corp.	TXG Marketing	6-08-88	G-S		
ST88-4109 CNG Transmission Corp.	Riley Natural	6-08-88	G-S		
ST88-4110 CNG Transmission Corp.	TXG Marketing	6-08-88	G-S		
ST88-4111 CNG Transmission Corp.	Bishop Pipeline Corp.	6-08-88	G-S		
ST88-4112 CNG Transmission Corp.	Riley Natural	6-08-88	G-S		
ST88-4113 CNG Transmission Corp.	CNG Trading Co.	6-08-88	G-S		
ST88-4114 CNG Transmission Corp.	Direct Gas	6-08-88	G-S		
ST88-4115 CNG Transmission Corp.	PSI, Inc.	6-08-88	G-S		
ST88-4116 Lawrenceburg Gas Transmission Corp.	Cincinnati Gas and Electric Co.	6-08-88	B		
ST88-4117 Arkla Energy Resources	The Borough of Chambersburg Gas Dept.	6-08-88	B		
ST88-4118 Arkla Energy Resources	Mt. Carmel Public Utility Co.	6-08-88	B		
ST88-4119 Arkla Energy Resources	Cairo Public Utility Comm.	6-08-88	B		
ST88-4120 Panhandle Eastern Pipe Line Co.	Western Gas Processors	6-09-88	G-S		
ST88-4121 Williams Natural Gas Co.	Heartland Gas Marketing, Inc.	6-09-88	G-S		
ST88-4122 Williams Natural Gas Co.	Vesta Energy Co.	6-09-88	G-S		
ST88-4123 Tennessee Gas Pipeline Co.	East Ohio Gas Co.	6-09-88	B		
ST88-4124 Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co.	6-10-88	B		
ST88-4125 Transok, Inc.	Arkla Energy Resources	6-10-88	C	11-07-88	37.13
ST88-4126 Transok, Inc.	Natural Gas Pipeline Co. of America	6-10-88	C	11-07-88	37.13
ST88-4127 Kentucky West Virginia Gas Co.	Equitable Gas Co.	6-13-88	B		
ST88-4128 Kentucky West Virginia Gas Co.	Equitable Gas Co.	6-13-88	B		
ST88-4129 Kentucky West Virginia Gas Co.	Equitable Gas Co.	6-13-88	B		
ST88-4130 United Gas Pipe Line Co.	Florida Gas Transmission Co.	6-10-88	G		
ST88-4131 United Gas Pipe Line Co.	Bishop Pipeline Corp.	6-10-88	B		
ST88-4132 United Gas Pipe Line Co.	Amalgamated Pipeline Co.	6-10-88	B		
ST88-4133 United Gas Pipe Line Co.	Jala Pipe Line Corp.	6-10-88	B		
ST88-4134 United Gas Pipe Line Co.	Tejas Power Corp.	6-10-88	G-S		
ST88-4135 United Gas Pipe Line Co.	Texaco Producing, Inc.	6-10-88	G-S		
ST88-4136 Tennessee Gas Pipeline Co.	Peoples Natural Gas Co., et al.	6-10-88	B		
ST88-4137 ANR Pipeline Co.	Great River Gas Co.	6-10-88	B		
ST88-4138 ANR Pipeline Co.	Consumers Power Co.	6-10-88	B		
ST88-4139 ANR Pipeline Co.	Mountaineer Gas Co.	6-10-88	B		
ST88-4140 ANR Pipeline Co.	Peoples Gas Light & Coke Co.	6-10-88	B		
ST88-4141 ANR Pipeline Co.	Olympic Pipeline Co.	6-10-88	B		
ST88-4142 ANR Pipeline Co.	Ohio Gas Co.	6-10-88	B		
ST88-4143 ANR Pipeline Co.	Battle Creek Gas Co.	6-10-88	B		
ST88-4144 ANR Pipeline Co.	Golden Gas Energies, Inc.	6-10-88	B		
ST88-4145 Colorado Interstate Gas Co.	Iowa-Illinois Gas & Electric Co.	6-13-88	B		
ST88-4146 Williams Natural Gas Co.	Oxy U.S.A., Inc.	6-13-88	G-S		
ST88-4147 Tennessee Gas Pipeline Co.	Access Energy Pipeline Corp.	6-13-88	B		
ST88-4148 Gulf Energy Pipeline Co.	Tennessee Gas Pipeline Co.	6-13-88	C		
ST88-4149 Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.	6-13-88	B		
ST88-4150 Transcontinental Gas Pipe Line Corp.	Southwestern Virginia Gas Co.	6-13-88	B		
ST88-4151 United Gas Pipe Line Co.	Peoples Gas & Power Co., et al.	6-13-88	B		
ST88-4152 Texas Eastern Transmission Corp.	Monterey Pipeline Co.	6-14-88	B		

Docket No. ¹ and transporter/seller	Recipient	Date filed	Sub-part	Expiration date ²	Transportation rate (cents per MMBtu)
ST88-4153 Texas Eastern Transmission Corp.	Mississippi Valley Gas Co.	6-14-88	B		
ST88-4154 Texas Eastern Transmission Corp.	Indiana Gas Co., Inc.	6-14-88	B		
ST88-4155 Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	6-14-88	B		
ST88-4156 Texas Eastern Transmission Corp.	Brooklyn Union Gas Co.	6-14-88	B		
ST88-4157 Texas Eastern Transmission Corp.	Union Electric Co.	6-14-88	B		
ST88-4158 Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	6-14-88	B		
ST88-4159 Texas Eastern Transmission Corp.	Brooklyn Union Gas Co.	6-14-88	B		
ST88-4160 Texas Eastern Transmission Corp.	Philadelphia Gas Works	6-14-88	B		
ST88-4161 Texas Eastern Transmission Corp.	City of Batesville	6-14-88	B		
ST88-4162 Texas Eastern Transmission Corp.	Philadelphia Electric Co.	6-14-88	B		
ST88-4163 Texas Eastern Transmission Corp.	City of Loretto	6-14-88	B		
ST88-4164 Texas Eastern Transmission Corp.	Brooklyn Union Gas Co.	6-14-88	B		
ST88-4165 Texas Eastern Transmission Corp.	City of Cairo	6-14-88	B		
ST88-4166 Texas Eastern Transmission Corp.	City of Norwich	6-14-88	B		
ST88-4167 Texas Eastern Transmission Corp.	City of Liberty	6-14-88	B		
ST88-4168 Texas Eastern Transmission Corp.	City of New Harmony	6-14-88	B		
ST88-4169 Texas Eastern Transmission Corp.	Bay State Gas Co.	6-14-88	B		
ST88-4170 Texas Eastern Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4171 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4172 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4173 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4174 CNG Transmission Corp.	Hope Gas, Inc.	6-14-88	B		
ST88-4175 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4176 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4177 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4178 CNG Transmission Corp.	Peoples Natural Gas Co.	6-14-88	B		
ST88-4179 CNG Transmission Corp.	Corning Natural Gas Corp.	6-14-88	B		
ST88-4180 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4181 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4182 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4183 CNG Transmission Corp.	Peoples Natural Gas Co.	6-14-88	B		
ST88-4184 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4185 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4186 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4187 CNG Transmission Corp.	Peoples Natural Gas Co.	6-14-88	B		
ST88-4188 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4189 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4190 CNG Transmission Corp.	River Gas Co.	6-14-88	B		
ST88-4191 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4192 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4193 CNG Transmission Corp.	Peoples Natural Gas Co.	6-14-88	B		
ST88-4194 CNG Transmission Corp.	East Ohio Gas Co.	6-14-88	B		
ST88-4195 CNG Transmission Corp.	East Ohio Gas Co.	6-14-88	B		
ST88-4196 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4197 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4198 CNG Transmission Corp.	Peoples Natural Gas Co.	6-14-88	B		
ST88-4199 CNG Transmission Corp.	Peoples Natural Gas Co.	6-14-88	B		
ST88-4200 CNG Transmission Corp.	Peoples Natural Gas Co.	6-14-88	B		
ST88-4201 CNG Transmission Corp.	Peoples Natural Gas Co.	6-14-88	B		
ST88-4202 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4203 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4204 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4205 CNG Transmission Corp.	Tennessee Gas Pipeline Co.	6-14-88	G		
ST88-4206 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4207 CNG Transmission Corp.	New York State Electric and Gas Co.	6-14-88	B		
ST88-4208 CNG Transmission Corp.	Mountaineer Gas Co.	6-14-88	B		
ST88-4209 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4210 CNG Transmission Corp.	East Ohio Gas Co.	6-14-88	B		
ST88-4211 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4212 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4213 CNG Transmission Corp.	River Gas Co.	6-14-88	B		
ST88-4214 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4215 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4216 CNG Transmission Corp.	North Penn Gas Co.	6-14-88	B		
ST88-4217 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-14-88	B		
ST88-4218 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4219 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4220 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-14-88	B		
ST88-4221 CNG Transmission Corp.	Hope Gas, Inc.	6-14-88	B		
ST88-4222 CNG Transmission Corp.	Peoples Natural Gas Co.	6-14-88	B		
ST88-4223 Transco Louisiana Intrastate Pipeline Co.		6-14-88	C	11-11-88	00.49
ST88-4224 Transco Louisiana Intrastate Pipeline Co.		6-14-88	C	11-11-88	01.02
ST88-4225 Tennessee Gas Pipeline Co.	CNG Transmission Corp.	6-14-88	G		
ST88-4226 Tennessee Gas Pipeline Co.	Cokinos Natural Gas Co.	6-14-88	B		
ST88-4227 Tennessee Gas Pipeline Co.	Energy Buyers Service Corp.	6-14-88	G-S		
ST88-4228 Trunkline Gas Co.	Bishop Pipeline Corp.	6-15-88	B		
ST88-4229 Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	6-15-88	B		
ST88-4230 Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	6-15-88	B		

Docket No. ¹ and transporter/seller	Recipient	Date filed	Sub-part	Expiration date ²	Transportation rate (cents per MMBtu)
ST88-4231 El Paso Natural Gas Co.	Northern Illinois Gas Co.	6-15-88	B		
ST88-4232 El Paso Natural Gas Co.	Southwest Gas Corp.	6-15-88	B		
ST88-4233 El Paso Natural Gas Co.	B&A Pipeline Co.	6-15-88	B		
ST88-4234 Valero Transmission L.P.	Texas Eastern Transmission Corp.	6-15-88	C		
ST88-4235 United Gas Pipe Line Co.	Clinton Newberry Nat. Gas Authority	6-15-88	B		
ST88-4236 United Gas Pipe Line Co.	SNG Intrastate Pipeline, Inc.	6-15-88	B		
ST88-4237 United Gas Pipe Line Co.	Chevron U.S.A.	6-15-88	G-S		
ST88-4238 Tennessee Gas Pipeline Co.	Energy Marketing Exchange, Inc.	6-15-88	G-S		
ST88-4239 Tennessee Gas Pipeline Co.	Energy North, Inc.	6-15-88	B		
ST88-4240 Tennessee Gas Pipeline Co.	Florida Gas Transmission Co.	6-15-88	G		
ST88-4241 Tennessee Gas Pipeline Co.	Columbia Gas Transmission Corp.	6-15-88	G		
ST88-4242 Southern Natural Gas Co.	South Carolina Pipeline Corp.	6-15-88	B		
ST88-4243 Southern Natural Gas Co.	Atlanta Gas Light Co.	6-15-88	B		
ST88-4244 Southern Natural Gas Co.	SNG Intrastate Pipeline, Inc.	6-15-88	B		
ST88-4245 Southern Natural Gas Co.	City of Trion	6-15-88	B		
ST88-4246 Mississippi Valley Gas Co.		6-16-88	C	11-13-88	33.70
ST88-4247 Tennessee Gas Pipeline Co.	Tejas Power Corp.	6-16-88	G-S		
ST88-4248 Tennessee Gas Pipeline Co.	Columbia Gas Transmission Corp.	6-16-88	G		
ST88-4249 Tennessee Gas Pipeline Co.	Energy North, Inc.	6-16-88	B		
ST88-4250 Transcontinental Gas Pipe Line Corp.	Pennsylvania Gas & Water Co., et al.	6-16-88	B		
ST88-4251 Transcontinental Gas Pipe Line Corp.	Delmarva Power and Light Co.	6-16-88	B		
ST88-4252 Transcontinental Gas Pipe Line Corp.	Piedmont Natural Gas Co.	6-16-88	B		
ST88-4253 Transcontinental Gas Pipe Line Corp.	Southwestern Virginia Gas Co.	6-16-88	B		
ST88-4254 Transcontinental Gas Pipe Line Corp.	Northern Ill. Gas Co., et al.	6-16-88	B		
ST88-4255 United Texas Transmission Co.	Natural Gas Pipeline Co. of America	6-17-88	C		
ST88-4256 Phillips Gas Pipeline Co.	Phillips Natural Gas Co.	6-17-88	G-HT		
ST88-4257 Texas Eastern Transmission Corp.	Southern Connecticut Gas Co.	6-17-88	B		
ST88-4258 Texas Eastern Transmission Corp.	Indiana Gas Co., Inc.	6-17-88	B		
ST88-4259 Texas Eastern Transmission Corp.	City of Lebanon	6-17-88	B		
ST88-4260 Texas Eastern Transmission Corp.	Central Illinois Public Service Co.	6-17-88	B		
ST88-4261 Texas Eastern Transmission Corp.	City of Kennett	6-17-88	B		
ST88-4262 Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	6-17-88	B		
ST88-4263 Texas Eastern Transmission Corp.	Orange and Rockland Utilities, Inc.	6-17-88	B		
ST88-4264 Transcontinental Gas Pipe Line Corp.	Northern Illinois Gas Co.	6-17-88	B		
ST88-4265 Transcontinental Gas Pipe Line Corp.	South Carolina Pipeline Corp.	6-17-88	B		
ST88-4266 Transcontinental Gas Pipe Line Corp.	Piedmont Natural Gas Co.	6-17-88	B		
ST88-4267 Northwest Pipeline Corp.	Iowa-Illinois Gas & Electric Co.	6-17-88	B		
ST88-4268 Northwest Pipeline Corp.	Cascade Natural Gas Corp.	6-17-88	B		
ST88-4269 United Gas Pipe Line Co.	City of Dublin, et al.	6-17-88	B		
ST88-4270 United Gas Pipe Line Co.	Peoples Gas & Power Co., Inc., et al.	6-17-88	B		
ST88-4271 United Gas Pipe Line Co.	Texas Southern Pipeline, Inc.	6-17-88	B		
ST88-4272 United Gas Pipe Line Co.	South Carolina Pipeline et al.	6-17-88	B		
ST88-4273 United Gas Pipe Line Co.	Texaco Gas Marketing, Inc.	6-17-88	G-S		
ST88-4274 United Gas Pipe Line Co.	Tejas Power Corp.	6-17-88	G-S		
ST88-4275 United Gas Pipe Line Co.	Trans Louisiana Gas Co., Inc.	6-17-88	B		
ST88-4276 Northern Natural Gas Co.	East Ohio Gas Co.	6-17-88	B		
ST88-4277 Northern Natural Gas Co.	Exxon Corp.	6-17-88	G-S		
ST88-4278 Columbia Gulf Transmission Co.	Columbia Gas Transmission Corp.	6-17-88	G		
ST88-4279 Cranberry Pipeline Corp.		6-17-88	C	11-14-88	74.50
ST88-4280 Natural Gas Pipeline Co. of America	Transcontinental Gas Pipe Line Corp.	6-20-88	G		
ST88-4281 Natural Gas Pipeline Co. of America	Exxon Gas System, Inc.	6-20-88	B		
ST88-4282 Natural Gas Pipeline Co. of America	Venture Pipeline Co.	6-20-88	B		
ST88-4283 El Paso Natural Gas Co.	Southwest Gas Corp.	6-20-88	B		
ST88-4284 Transcontinental Gas Pipe Line Corp.	Piedmont Natural Gas Co.	6-20-88	B		
ST88-4285 Transcontinental Gas Pipe Line Corp.	Public Service Electric and Gas Co.	6-20-88	B		
ST88-4286 Williams Natural Gas Co.	Ford Motor Co.	6-20-88	G-S		
ST88-4287 ANR Pipeline Co.	Producers Gas Pipeline Co.	6-20-88	B		
ST88-4288 ANR Pipeline Co.	Paris Henry Co. Public Utility Dist.	6-20-88	B		
ST88-4289 ANR Pipeline Co.	Wisconsin Gas Co.	6-20-88	B		
ST88-4290 ANR Pipeline Co.	Michigan Gas Utilities Co.	6-20-88	B		
ST88-4291 ANR Pipeline Co.	Michigan Gas Co.	6-20-88	B		
ST88-4292 ANR Pipeline Co.	Paris Henry Co. Public Utility Dist.	6-20-88	B		
ST88-4293 ANR Pipeline Co.	Quivira Gas Co.	6-20-88	B		
ST88-4294 ANR Pipeline Co.	Access Energy Pipeline Corp.	6-20-88	B		
ST88-4295 ANR Pipeline Co.	Union Natural Gas Pipeline Co.	6-20-88	B		
ST88-4296 Trunkline Gas Co.	Transamerican Gas Transmission Corp.	6-20-88	B		
ST88-4297 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		
ST88-4298 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		
ST88-4299 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		
ST88-4300 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		
ST88-4301 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		
ST88-4302 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		
ST88-4303 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		
ST88-4304 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		
ST88-4305 Trunkline Gas Co.	Superior Natural Gas Corp.	6-20-88	G-S		
ST88-4306 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		
ST88-4307 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		
ST88-4308 Trunkline Gas Co.	Consumers Power Co.	6-20-88	B		

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ST88-4309	Trunkline Gas Co	6-20-88	B		
ST88-4310	Trunkline Gas Co	6-20-88	B		
ST88-4311	Trunkline Gas Co	6-20-88	B		
ST88-4312	Trunkline Gas Co	6-20-88	B		
ST88-4313	Trunkline Gas Co	6-20-88	B		
ST88-4314	Trunkline Gas Co	6-20-88	B		
ST88-4315	Trunkline Gas Co	6-20-88	B		
ST88-4316	Trunkline Gas Co	6-20-88	B		
ST88-4317	Trunkline Gas Co	6-20-88	B		
ST88-4318	Tennessee Gas Pipeline Co	6-21-88	G		
ST88-4319	Tennessee Gas Pipeline Co	6-21-88	G		
ST88-4320	Tennessee Gas Pipeline Co	6-21-88	B		
ST88-4321	Tennessee Gas Pipeline Co	6-21-88	G		
ST88-4322	Tennessee Gas Pipeline Co	6-21-88	B		
ST88-4323	Tennessee Gas Pipeline Co	6-21-88	G		
ST88-4324	Tennessee Gas Pipeline Co	6-21-88	B		
ST88-4325	Tennessee Gas Pipeline Co	6-21-88	B		
ST88-4326	Tennessee Gas Pipeline Co	6-21-88	B		
ST88-4327	Tennessee Gas Pipeline Co	6-21-88	B		
ST88-4328	Tennessee Gas Pipeline Co	6-21-88	B		
ST88-4329	Tennessee Gas Pipeline Co	6-21-88	B		
ST88-4330	Tennessee Gas Pipeline Co	6-21-88	B		
ST88-4331	Texas Eastern Transmission Corp	6-21-88	B		
ST88-4332	Texas Eastern Transmission Corp	6-21-88	B		
ST88-4333	Texas Eastern Transmission Corp	6-21-88	B		
ST88-4334	Texas Eastern Transmission Corp	6-21-88	B		
ST88-4335	Texas Eastern Transmission Corp	6-21-88	B		
ST88-4336	Algonquin Gas Transmission Co	6-21-88	B		
ST88-4337	Tennessee Gas Pipeline Co	6-21-88	G-S		
ST88-4338	Transcontinental Gas Pipe Line Corp	6-22-88	B		
ST88-4339	Transcontinental Gas Pipe Line Corp	6-22-88	B		
ST88-4340	Transcontinental Gas Pipe Line Corp	6-22-88	B		
ST88-4341	El Paso Natural Gas Co	6-22-88	B		
ST88-4342	El Paso Natural Gas Co	6-22-88	B		
ST88-4343	Valero Interstate Transmission Co	6-22-88	B		
ST88-4344	Valero Transmission, L.P.	6-22-88	C		
ST88-4345	Valero Transmission, L.P.	6-22-88	C		
ST88-4346	Natural Gas Pipeline Co. of America	6-22-88	B		
ST88-4347	Tennessee Gas Pipeline Co	6-22-88	G		
ST88-4348	Trunkline Gas Co	6-22-88	B		
ST88-4349	Trunkline Gas Co	6-22-88	B		
ST88-4350	Trunkline Gas Co	6-22-88	B		
ST88-4351	Texas Eastern Transmission Corp	6-23-88	B		
ST88-4352	Texas Eastern Transmission Corp	6-23-88	B		
ST88-4353	Texas Eastern Transmission Corp	6-23-88	B		
ST88-4354	Texas Eastern Transmission Corp	6-23-88	B		
ST88-4355	United Gas Pipe Line Co	6-23-88	B		
ST88-4356	United Gas Pipe Line Co	6-23-88	G-S		
ST88-4357	Transcontinental Gas Pipe Line Corp	6-23-88	B		
ST88-4358	Transcontinental Gas Pipe Line Corp	6-23-88	B		
ST88-4359	Transcontinental Gas Pipe Line Corp	6-23-88	B		
ST88-4360	Somerset Gas Service	6-22-88	C	11-19-88	40.00
ST88-4361	Arkla Energy Resources	6-24-88	B		
ST88-4362	United Gas Pipe Line Co	6-24-88	B		
ST88-4363	United Gas Pipe Line Co	6-24-88	B		
ST88-4364	United Gas Pipe Line Co	6-24-88	B		
ST88-4365	United Gas Pipe Line Co	6-27-88	G-S		
ST88-4366	United Gas Pipe Line Co	6-24-88	G-S		
ST88-4367	United Gas Pipe Line Co	6-24-88	G-S		
ST88-4368	United Gas Pipe Line Co	6-27-88	G-S		
ST88-4369	United Gas Pipe Line Co	6-24-88	G-S		
ST88-4370	United Gas Pipe Line Co	6-24-88	G-S		
ST88-4371	United Gas Pipe Line Co	6-24-88	B		
ST88-4372	ANR Pipeline Co	6-24-88	B		
ST88-4373	ANR Pipeline Co	6-24-88	B		
ST88-4374	Texas Eastern Transmission Corp	6-24-88	B		
ST88-4375	Texas Eastern Transmission Corp	6-24-88	B		
ST88-4376	Texas Eastern Transmission Corp	6-24-88	B		
ST88-4377	Texas Eastern Transmission Corp	6-24-88	B		
ST88-4378	Texas Eastern Transmission Corp	6-24-88	B		
ST88-4379	Texas Eastern Transmission Corp	6-24-88	B		
ST88-4380	Texas Eastern Transmission Corp	6-24-88	B		
ST88-4381	Texas Eastern Transmission Corp	6-24-88	B		
ST88-4382	Texas Eastern Transmission Corp	6-24-88	B		
ST88-4383	ANR Pipeline Co	6-24-88	B		
ST88-4384	Algonquin Gas Transmission Co	6-24-88	B		
ST88-4385	Algonquin Gas Transmission Co	6-24-88	B		
ST88-4386	Algonquin Gas Transmission Co	6-24-88	B		

Docket No. ¹ and transporter/seller	Recipient	Date filed	Sub-part	Expiration date ²	Transportation rate (cents per MMBtu)
ST88-4387 Algonquin Gas Transmission Co.	Southern Connecticut Gas Co.	6-24-88	B		
ST88-4388 Natural Gas Pipeline Co. of America	Wisconsin Gas Co.	6-24-88	B		
ST88-4389 Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co.	6-24-88	B		
ST88-4390 Northwest Pipeline Corp.	Northwest Natural Gas Co.	6-24-88	B		
ST88-4391 Northwest Pipeline Corp.	Utah Gas Service Co.	6-24-88	B		
ST88-4392 Transcontinental Gas Pipe Line Corp.	South Carolina Pipeline Corp.	6-24-88	B		
ST88-4393 Transcontinental Gas Pipe Line Corp.	Enserch Gas Transmission Co.	6-24-88	B		
ST88-4394 Columbia Gulf Transmission Co.	Nashville Gas Co., et al.	6-24-88	B		
ST88-4395 Tennessee Gas Pipeline Co.	Commonwealth Gas Co.	6-24-88	B		
ST88-4396 Tennessee Gas Pipeline Co.	Boston Gas Co.	6-24-88	B		
ST88-4397 Tennessee Gas Pipeline Co.	Southern Connecticut Gas Co.	6-24-88	B		
ST88-4398 Tennessee Gas Pipeline Co.	Valley Gas Co.	6-24-88	B		
ST88-4399 Trunkline Gas Co.	Associated Intrastate Pipeline Co.	6-27-88	B		
ST88-4400 Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.	6-27-88	B		
ST88-4401 Transcontinental Gas Pipe Line Corp.	City of Lexington, NC	6-27-88	B		
ST88-4402 El Paso Natural Gas Co.	Southern California Gas Co.	6-27-88	B		
ST88-4403 El Paso Natural Gas Co.	Pacific Gas and Electric Co.	6-24-88	B		
ST88-4404 Natural Gas Pipeline Co. of America	Cabot Energy Marketing Corp.	6-27-88	G-S		
ST88-4406 Kentucky West Virginia Gas Co.	Columbia Gas of Pennsylvania, et al.	6-27-88	B		
ST88-4407 Kentucky West Virginia Gas Co.	Columbia Gas of Kentucky, Inc.	6-27-88	B		
ST88-4408 Kentucky West Virginia Gas Co.	Eastern Shore Natural Gas Co.	6-27-88	B		
ST88-4409 Kentucky West Virginia Gas Co.	Baltimore Gas and Electric Co.	6-27-88	B		
ST88-4411 Kentucky West Virginia Gas Co.	UGI Corp.	6-27-88	B		
ST88-4412 Northwest Pipeline Corp.	Cascade Natural Gas Corp.	6-27-88	B		
ST88-4413 Northwest Pipeline Corp.	CP National Corp.	6-27-88	B		
ST88-4414 Sabine Pipe Line Co.	Indiana Gas Co., Inc.	6-27-88	B		
ST88-4415 Sabine Pipe Line Co.	Sun Gas Transmission Co., Inc.	6-27-88	B		
ST88-4416 Sabine Pipe Line Co.	Access Energy Pipeline Corp.	6-27-88	B		
ST88-4417 Tennessee Gas Pipeline Co.	Elizabethtown Gas Co.	6-27-88	B		
ST88-4418 Tennessee Gas Pipeline Co.	Orange and Rockland Utilities, Inc.	6-27-88	B		
ST88-4419 Tennessee Gas Pipeline Co.	Essex County Gas Co.	6-27-88	B		
ST88-4420 Tennessee Gas Pipeline Co.	Southern Connecticut Gas Co.	6-27-88	B		
ST88-4421 Tennessee Gas Pipeline Co.	Colonial Gas Corp.	6-27-88	B		
ST88-4422 Tennessee Gas Pipeline Co.	Columbia Gas of Ohio, et al.	6-28-88	B		
ST88-4423 Tennessee Gas Pipeline Co.	Western Kentucky Gas Co.	6-28-88	B		
ST88-4424 Neches Pipeline System	Natural Gas Pipeline Co. of America	6-28-88	C		
ST88-4425 Delhi Gas Pipeline Corp.	ANR Pipeline Co.	6-28-88	C	11-25-88	35.00
ST88-4426 Texas Gas Transmission Corp.	Shreveport Intrastate Gas Trans., Inc.	6-28-88	B		
ST88-4427 Texas Gas Transmission Corp.	Coastal States Gas Transmission Co.	6-28-88	B		
ST88-4428 Texas Gas Transmission Corp.	Excel Intrastate Pipeline Co.	6-28-88	B		
ST88-4429 Texas Gas Transmission Corp.	Coastal States Gas Transmission Co.	6-28-88	B		
ST88-4430 Texas Gas Transmission Corp.	Excel Intrastate Pipeline Co.	6-28-88	B		
ST88-4431 Texas Gas Transmission Corp.	Excel Intrastate Pipeline Co.	6-28-88	B		
ST88-4432 Texas Gas Transmission Corp.	Trans Louisiana Industries Gas Co., Inc.	6-28-88	B		
ST88-4433 Texas Gas Transmission Corp.	Switzerland County Natural Gas Co.	6-28-88	B		
ST88-4434 Texas Gas Transmission Corp.	City of Elizabethtown	6-28-88	B		
ST88-4435 Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	6-28-88	B		
ST88-4436 Texas Gas Transmission Corp.	Bay State Gas Co., et al.	6-28-88	B		
ST88-4437 Panhandle Eastern Pipe Line Co.	Michigan Power Co.	6-28-88	B		
ST88-4438 Panhandle Eastern Pipe Line Co.	Superior Water, Light and Power Co.	6-28-88	B		
ST88-4439 Panhandle Eastern Pipe Line Co.	Consumers Power Co.	6-28-88	B		
ST88-4440 Panhandle Eastern Pipe Line Co.	Consumers Power Co.	6-28-88	B		
ST88-4441 Panhandle Eastern Pipe Line Co.	Gulf Energy Marketing Co.	6-28-88	G-S		
ST88-4442 Panhandle Eastern Pipe Line Co.	Loutex Energy, Inc.	6-28-88	G-S		
ST88-4443 Panhandle Eastern Pipe Line Co.	Illinois Power Co.	6-28-88	B		
ST88-4444 Panhandle Eastern Pipe Line Co.	Consumers Power Co.	6-28-88	B		
ST88-4445 Panhandle Eastern Pipe Line Co.	Consumers Power Co.	6-28-88	B		
ST88-4446 Natural Gas Pipeline Co. of America	Spindletop Gas Distribution System	6-28-88	B		
ST88-4447 Natural Gas Pipeline Co. of America	Bridgeline Gas Distribution Co.	6-28-88	B		
ST88-4448 Natural Gas Pipeline Co. of America	Transco Energy Marketing	6-28-88	G-S		
ST88-4449 CNG Transmission Corp.	New York State Electric and Gas Co.	6-28-88	B		
ST88-4450 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-28-88	B		
ST88-4451 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-28-88	B		
ST88-4452 CNG Transmission Corp.	Bishop Pipeline Corp.	6-28-88	G-S		
ST88-4453 CNG Transmission Corp.	Entrade Corp.	6-28-88	G-S		
ST88-4454 CNG Transmission Corp.	Aluminum Smelting & Refining Co.	6-28-88	G-S		
ST88-4455 CNG Transmission Corp.	East Ohio Gas Co.	6-28-88	G-S		
ST88-4456 CNG Transmission Corp.	Brandywine Industries	6-28-88	G-S		
ST88-4457 CNG Transmission Corp.	CNG Trading Co.	6-28-88	G-S		
ST88-4458 CNG Transmission Corp.	Winters Industries	6-28-88	G-S		
ST88-4459 CNG Transmission Corp.	CNG Trading Co.	6-28-88	G-S		
ST88-4460 CNG Transmission Corp.	CNG Trading Co.	6-28-88	G-S		
ST88-4461 CNG Transmission Corp.	Unicorp.	6-28-88	G-S		
ST88-4462 CNG Transmission Corp.	Hadson Gas Systems, Inc.	6-28-88	G-S		
ST88-4463 CNG Transmission Corp.	Niagara Mohawk Power Corp.	6-28-88	B		
ST88-4464 CNG Transmission Corp.	United Engineering	6-28-88	G-S		
ST88-4465 CNG Transmission Corp.	Hendershot & Smith	6-28-88	G-S		
ST88-4466 CNG Transmission Corp.	Auburn Memorial Hospital	6-28-88	G-S		

Docket No. ¹ and transporter/seller	Recipient	Date filed	Sub-part	Expiration date ²	Transportation rate (cents per MMBtu)
ST88-4467 CNG Transmission Corp.	Lincoln Electric	6-28-88	G-S		
ST88-4468 CNG Transmission Corp.	PPG Industries	6-28-88	G-S		
ST88-4469 CNG Transmission Corp.	Thomas Steel Strip Corp.	6-28-88	G-S		
ST88-4470 CNG Transmission Corp.	CNG Trading Co.	6-28-88	G-S		
ST88-4471 CNG Transmission Corp.	Brandywine Industries	6-28-88	G-S		
ST88-4472 CNG Transmission Corp.	CNG Trading Co.	6-28-88	G-S		
ST88-4473 CNG Transmission Corp.	Access Energy Pipeline Corp.	6-28-88	G-S		
ST88-4474 CNG Transmission Corp.	PPG Industries	6-28-88	G-S		
ST88-4475 CNG Transmission Corp.	CNG Trading Co.	6-28-88	G-S		
ST88-4476 CNG Transmission Corp.	Hudson Gas Co.	6-28-88	G-S		
ST88-4477 CNG Transmission Corp.	TXG Marketing	6-28-88	G-S		
ST88-4478 CNG Transmission Corp.	PPG Industries	6-28-88	G-S		
ST88-4479 CNG Transmission Corp.	PSI, Inc.	6-28-88	G-S		
ST88-4480 CNG Transmission Corp.	Manufacturers Fuel Co.	6-28-88	G-S		
ST88-4481 CNG Transmission Corp.	Rochester Gas & Electric Corp.	6-28-88	B		
ST88-4482 CNG Transmission Corp.	East Ohio Gas Co.	6-28-88	B		
ST88-4483 CNG Transmission Corp.	TXG Marketing	6-28-88	G-S		
ST88-4484 CNG Transmission Corp.	Atlas Gas Marketing	6-28-88	G-S		
ST88-4485 CNG Transmission Corp.	CNG Trading Co.	6-28-88	G-S		
ST88-4486 CNG Transmission Corp.	Timker Co.	6-28-88	G-S		
ST88-4487 Transcontinental Gas Pipe Line Corp.	Pennsylvania Gas and Water Co.	6-28-88	B		
ST88-4488 Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co.	6-28-88	B		
ST88-4489 Transcontinental Gas Pipe Line Corp.	City of Danville	6-28-88	B		
ST88-4490 Transcontinental Gas Pipe Line Corp.	Eastex Gas Transmission Co.	6-28-88	B		
ST88-4491 Transcontinental Gas Pipe Line Corp.	Mississippi Fuel Co.	6-28-88	B		
ST88-4492 Transcontinental Gas Pipe Line Corp.	Bay State Gas Co.	6-28-88	B		
ST88-4493 Transcontinental Gas Pipe Line Corp.	Public Service Co. of N. Carolina	6-28-88	B		
ST88-4494 Transcontinental Gas Pipe Line Corp.	Mississippi Fuel Co., et al.	6-28-88	B		
ST88-4495 Transcontinental Gas Pipe Line Corp.	Northern Indiana Public Service Co.	6-28-88	B		
ST88-4496 Transcontinental Gas Pipe Line Corp.	Commission of Public Works, Lauren	6-28-88	B		
ST88-4497 United Gas Pipe Line Co.	Crescent Gas Corp.	6-29-88	B		
ST88-4498 Sea Robin Pipe Line Co.	Columbia Gas of Ohio, Inc., et al.	6-29-88	B		
ST88-4499 United Gas Pipe Line Co.	Victoria Gas Corp.	6-29-88	B		
ST88-4500 United Gas Pipe Line Co.	United Texas Transmission Co.	6-29-88	B		
ST88-4501 United Gas Pipe Line Co.	Resource Group, Inc.	6-29-88	G-S		
ST88-4502 United Gas Pipe Line Co.	Bishop Pipeline Corp.	6-29-88	B		
ST88-4503 United Gas Pipe Line Co.	Victoria Gas Corp.	6-29-88	B		
ST88-4504 United Gas Pipe Line Co.	Baltimore Gas & Elect. Co., et al.	6-29-88	B		
ST88-4505 Sea Robin Pipeline Co.	Iscos Pipeline, Inc.	6-29-88	B		
ST88-4506 Arkla Energy Resources	T.W. Phillips Gas & Oil Co.	6-29-88	B		
ST88-4507 Arkla Energy Resources	City of Huntington	6-29-88	B		
ST88-4508 Arkla Energy Resources	Allied Gas/Pottsville District	6-29-88	B		
ST88-4509 Panhandle Eastern Pipe Line Co.	Consolidated Fuel Corp.	6-29-88	G-S		
ST88-4510 Panhandle Eastern Pipe Line Co.	KPL Gas Service Co.	6-29-88	B		
ST88-4511 Panhandle Eastern Pipe Line Co.	KPL Gas Service Co.	6-29-88	B		
ST88-4512 Colorado Interstate Gas Co.	Public Service Co. of Colorado	8-29-88	B		
ST88-4513 Colorado Interstate Gas Co.	Victoria Gas Corp.	6-29-88	B		
ST88-4514 Tennessee Gas Pipeline Co.	Northern Illinois Gas Co.	6-29-88	B		
ST88-4515 Tennessee Gas Pipeline Co.	North Alabama Gas District	6-29-88	B		
ST88-4516 Tennessee Gas Pipeline Co.	Pennsylvania Gas and Water Co.	6-29-88	B		
ST88-4517 Tennessee Gas Pipeline Co.	Mobil Natural Gas, Inc.	6-29-88	G-S		
ST88-4518 Delhi Gas Pipeline Corp.	Natural Gas Pipeline Co. of America	6-30-88	C	11-27-88	35.00
ST88-4519 Seagull Shoreline System	Northern Natural Gas Co.	6-30-88	C	11-27-88	30.00
ST88-4520 Transcontinental Gas Pipe Line Corp.	Pennsylvania Gas and Water Co.	6-30-88	B		
ST88-4521 Transcontinental Gas Pipe Line Corp.	Philadelphia Gas Works	6-30-88	B		
ST88-4522 Transcontinental Gas Pipe Line Corp.	Long Island Lighting Co.	6-30-88	B		
ST88-4523 Transcontinental Gas Pipe Line Corp.	Pennsylvania Gas and Water Co.	6-30-88	B		
ST88-4524 Transcontinental Gas Pipe Line Corp.	Bridgeline Gas Distribution Co.	6-30-88	B		
ST88-4525 Louisiana Resources Co.	United Gas Pipe Line Co.	6-30-88	C	11-27-88	26.43
ST88-4526 Trunkline Gas Co.	Consumers Power Co.	6-30-88	B		
ST88-4527 Panhandle Eastern Pipe Line Co.	Reed Minerals Div. Hansco Corp.	6-30-88	G-S		
ST88-4528 Tennessee Gas Pipeline Co.	Access Energy Pipeline Corp.	6-30-88	B		
ST88-4529 Tennessee Gas Pipeline Co.	Columbia Gas of Ohio, Inc., et al.	6-30-88	B		
ST88-4530 Northern Natural Gas Co.	Arco Oil & Gas Co.	6-30-88	G-S		
ST88-4531 Northern Natural Gas Co.	Rural Energy Systems, Inc.	6-30-88	B		
ST88-4532 Northern Natural Gas Co.	Archer Daniels Midland Co.	6-30-88	G-S		
ST88-4533 Northern Natural Gas Co.	Minnegasco, Inc.	6-30-88	B		
ST88-4534 Northern Natural Gas Co.	Riata Energy	6-30-88	G-S		
ST88-4535 Northern Natural Gas Co.	Texaco, Inc.	6-30-88	G-S		
ST88-4536 Northern Natural Gas Co.	Tennessee Gas Pipeline Co.	6-30-88	B		
ST88-4537 Northern Natural Gas Co.	NGC Intrastate Pipeline Co.	6-30-88	B		
ST88-4538 Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	6-30-88	B		
ST88-4539 Texas Eastern Transmission Corp.	North Alabama Gas District	6-30-88	B		
ST88-4540 Texas Eastern Transmission Corp.	Commonwealth Gas Co.	6-30-88	B		
ST88-4541 Texas Eastern Transmission Corp.	East Ohio Gas Co.	6-30-88	B		
ST88-4542 Texas Eastern Transmission Corp.	Niagara Mohawk Power Corp.	6-30-88	B		
ST88-4543 Texas Eastern Transmission Corp.	Philadelphia Electric Co.	6-30-88	B		

Docket No. ¹ and transporter/seller	Recipient	Date filed	Sub-part	Expiration date ²	Transportation rate (cents per MMBtu)
ST88-4544 Texas Eastern Transmission Corp.....	Rochester Gas & Electric Corp.....	6-30-88	B		

¹ Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 F.R. 42,372, 10/18/85).

² The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(b)(2) of the Commission's regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 88-18390 Filed 8-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-010]

Northwest Pipeline Corp.; Filing

August 11, 1988.

Take notice that on August 8, 1988, Northwest Pipeline Corporation (Northwest) filed Corrected Substitute Thirteenth Revised Sheet No. 2 and Corrected Substitute Fifth Revised Sheet No. 2.1 to its FERC Gas Tariff, Original Volume No. 2.

Northwest states that on July 18, 1988, it submitted a filing in compliance with a Commission order issued May 18, 1988. Northwest states that in the July 18, 1988 filing it inadvertently included tariff language previously based on nominations and that Corrected Sheet Nos. 2 and 2.1 revises the language to reflect billing based on actual deliveries.

Northwest requests that the above-referenced tariff sheets be substituted for those contained in the July 18, 1988 filing and that July 3, 1988 be designated as their effective date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18620 Filed 8-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-001]

Palute Pipeline Co.; Filing

August 11, 1988.

Take notice that on August 3, 1988, Paiute Pipeline Company (Paiute) filed Substitute First Revised Sheet No. 99 to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective September 1, 1988.

Paiute requests that this tariff sheet be substituted for First Revised Sheet No. 99 which was included in its filing of August 1, 1988. Paiute states that First Revised Sheet No. 99 showed Annual Entitlement and Monthly Entitlement volumes in therms and that Substitute First Revised Sheet No. 99 shows the Annual Entitlement and Monthly Entitlement volumes in dekatherms.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-18621 Filed 8-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-13-000]

**Valero Interstate Transmission Co.;
Petition for Adjustment**

Issued August 10, 1988.

Take notice that on July 18, 1988, Valero Interstate Transmission Company (Vitco) filed with the Federal Energy Regulatory Commission a

Petition for an Adjustment and Waiver pursuant to section 502(c) of the Natural Gas Policy Act (NGPA) to allow Vitco to file a request pursuant to previously effective 18 CFR 284.103(d)(3)¹ and to retain revenues equal to out-of-pocket costs with respect to four self-implementing transportation transactions under section 311 of the NGPA during the period in which § 284.103(d)(3) was effective.²

Vitco states that a waiver of the regulations and approval of its accounting treatment is justified because application of the accounting treatment under previous § 284.103(d)(1), which requires that all revenues in excess of 1 cent per MMBtu be credited to Account No. 191 and flowed back to customers, will result in an undue burden and special hardship. Vitco further states that it should not be deprived of access to the procedure under § 284.103(d)(3) in order to retain revenues equal to out-of-pocket costs, even though that section has since been removed, because it could not file a meaningful application until all cost and revenue data were known at the end of the transactions.

Vitco asserts that it will suffer an inequitable and unfair burden without a waiver if it is deprived of the accounting treatment for recovery of out-of-pocket costs that it relied upon as the basis of the decision to incur those costs. Vitco further asserts that it will suffer hardship because the retention of only 1 cent per MMBtu will cause it to underrecover \$581,220 plus interest.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the

¹ Section 284.103 was removed effective November 1, 1985, by Order No. 436 (50 FR 42408, Oct. 18, 1985).

² Vitco states that the transporters involved were Valero Transmission Company, L.P., Esperanza Transmission Company, American Pipeline Company, and United States Gas Pipe Line Company.

provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18629 Filed 8-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88-22-000]

Woods Petroleum Corp.; Informal Technical Conference

August 11, 1988.

Take notice that on November 26, 1988 at 10:00 a.m. an informal technical conference in the above docketed proceeding will be held at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC in room 8308. Any issue related to this proceeding can be discussed.

All parties to this proceeding, the Commission staff, and interested members of the public are invited to attend. However, mere attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with Rule 214 of the Commission's rules of practice and procedure.¹

For further information contact:

James Whitfield, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol St. NE., Washington, DC 20426, (202) 357-9119.

Laura L. Turner, Office of Pipeline and Producer Regulation, 825 N. Capitol St. NE., Washington, DC 20426, (202) 357-5345.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18623 Filed 8-16-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3430-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that

the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Ocean Dumping Regulation—Reports and Recordkeeping to Obtain Permit, Request Designation and Report on Permitted Dumping Activities (EPA ICR # 0824).

Abstract: Government or private business entities must apply for a permit to dump materials into the ocean. Respondents provide supporting information with their applications. Permittees submit reports and maintain records of actual dumping activities. New dumping sites may be requested other than those previously established by EPA.

Burden Statement: The estimated public reporting burden for this collection of information for Special Permit applicants is 1,094 hours to complete the application and 404 hours annually to maintain records and submit reports. For General, Interim, Research and Emergency Permit applicants, the burden is 12 hours to complete the application and 6 hours annually for reports/recordkeeping. Site Designation Requests will require approximately 8,866 hours to complete. This estimate includes the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Businesses and municipalities.

Estimated No. of Respondents: 21.

Estimated Total Annual Burden on Respondents: 27,004 hours.

Frequency of Collection: 2 responses per year.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: August 8, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88-18590 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00270; FRL-3430-6]

Nominations to the Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 *et seq.*). Under FIFRA (Pub. L. 98-201), the statutory Panel terminated on September 30, 1987. The Panel was administratively reestablished on October 1, 1987, in accordance with the requirements for the Federal Advisory Committee Act, 5 U.S.C. (Appendix I) 9(c). Public comment on the nominations is invited. Comments will be used to assist the Agency in selecting nominees to comprise the Panel and should be so oriented.

ADDRESS: By mail, submit comments to: Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

DATE: Comments should be postmarked not later than September 16, 1988.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7695).

SUPPLEMENTARY INFORMATION:

I. Background

FIFRA amendments enacted November 28, 1975, added, among other things, a requirement set forth in section 25(d) that notices of intent to cancel or reclassify pesticide registrations

¹ 18 CFR 385.214 (1988).

pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impact of such actions.

II. Charter

A Charter for the FIFRA Scientific Advisory Panel has been issued in accordance with the requirements of section 9(c) of the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770 (5 U.S.C. App I). The qualifications as provided by the Charter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. No person shall be ineligible to serve on the Panel by reason of his membership on any other advisory committee to a Federal department or agency or his employment by a Federal department or agency (except the Environmental Protection Agency). The Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of Title 40, CFR, Part 3, Subpart F—Standards of Conduct for Special Government Employees, which include rules regarding conflicts-of-interest. An officer and/or employee of an organization producing, selling, or distributing pesticides and any other person having a substantial financial interest (as determined by the Administrator) in such as organization, as well as an officer or employee of an organization representing pesticide users shall be excluded from consideration as a nominee for membership on the Panel. Each nominee selected by the Administrator shall be required, before being formally appointed, to submit a Confidential Statement of Employment and Financial Interests, which shall fully disclose the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, including information on their education background, employment history, and scientific publications. Section 25(d) of FIFRA requires the Administrator to

issue for publication in the **Federal Register** the name, address, and professional affiliations of each nominee.

B. Applicability of Existing Regulations

With respect to the requirement of section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special government employees (which include advisory committee members) will apply to the members of the scientific Advisory Panel. These regulations appear at 40 CFR Part 3, Subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of obtaining nominees

In accordance with the provisions of section 25(d), EPA, in May 1988, requested the National Institutes of Health (NIH) and the National Science Foundation (NSF) to nominate scientists to fill one vacancy occurring on the SAP. NIH responded by letter dated June 21, 1988, enclosing a list of 8 nominees; NSF responded by letter dated June 9, 1988, with a list of 10 nominees.

III. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data on nominees being considered for membership on the FIFRA Scientific Advisory Panel to fill one vacancy occurring during calendar year 1988.

Barrett, Gary Wayne, Department of Zoology and Physiology, Miami University, Oxford, Ohio. Expertise: Ecology. Born: January 3, 1940. Education: Oakland City College, BS, 1961; Marquette University, MS, 1963; University of Georgia, PhD (zoology) 1967. Professional experience: Assistant professor biology, Drake University, 1967–1968; assistant professor, 1968–1975; acting director, Institute of Environmental Science, 1970–1975; associate professor, 1975–1977; professor of zoology, Miami University, 1977–present; Deputy Director, Institute of Environmental Science, 1975–present. Concurrent positions: Drake University Research Counsel grant, 1967–1968; NSF grant, 1970. Societies: AAA; Ecological Society of America; American Society of Mammalogists; Wildlife Society; American Institute of Biological Science. Research: Pesticide stresses on total ecosystems; mammalian population regulation and dynamics; species diversity in nature; bioenergetics of small mammal populations.

Benditt, Earl Philip, Professor, Department of Pathology, SJ-60,

University of Washington Medical School, Seattle, Washington. Expertise: pathology. Born: April 15, 1916. Education: Swarthmore College, BA, 1937; Harvard University, MD, 1941. Professional experience: Instructor to associate professor, pathology, School of Medicine, University of Chicago 1944–1957; chairman of department, 1957–1961; professor, pathology, School of Medicine, University of Washington, 1957–present. Concurrent positions: Assistant director, research, La Rabida Sanitarium, Illinois, 1950–1956; visiting scientist and Commonwealth Fund fellow, Sir William Dunn School of Pathology, Oxford, 1965; council member, National Institute of Environmental Health Science, 1970–1973; consultant, Veterans Administration and U.S. Public Health Service; visiting professor, Sir William Dunn School of Pathology, Oxford, 1979–1980. Honors and Awards: Rous-Whipple Award, American Association of Pathologists, 1980; Societies: National Academy of Science; American Society of Experimental Pathologists (vice president 1974–1975; president, 1975–1976); Society of Experimental Biology and Medicine; Histochemical Society (vice president 1962–1963, president 1963–1964); American Association of Pathologists and Bacteriologists. Research: Cell injury; inflammation; wound healing; atherosclerosis and heart diseases.

Benirschke, Kurt, Professor, Reproductive Medicine and Pathology, University of California, San Diego, La Jolla, California. Expertise: pathology. Born: May 26, 1924. Education: University of Hamburg, MD 1948. Professional experience: Associate pathologist, Harvard Medical School, 1957–1960; professor and chairman of department, Dartmouth Medical School, 1960–1970; professor, Reproductive Medicine and Pathology, University of California, San Diego, 1970–present; director of research, San Diego Zoo, 1975–present. Societies: College of American Pathologists; American Association of Pathologists and Bacteriologists. Research: Pathology and endocrinology of human fetus and placenta; gemellology; mammalian hybrids.

Ferris, Benjamin Greeley, Jr., Department of Physiology, Harvard University School of Public Health, Boston, Massachusetts. Expertise: Environmental health, pulmonary diseases. Born: January 24, 1919. Educational background: Harvard College, AB 1940; Harvard Medical School, MD, 1943. Professional experience: Intern to assistant resident

pediatrician, Children's Hospital, Boston, Massachusetts, 1943-1948; assistant professor to associate professor, 1950-1971; professor, Environmental Health, School of Public Health, Harvard University, 1971-present. Concurrent positions: Research fellow in physiology, School of Public Health, Harvard University, 1948-1950; assistant physician, Phillips Academy, Andover, Massachusetts, 1949-1950; industrial research physician, Ludlow Jute Company, India, 1951; consultant, Massachusetts General Hospital, Lemuel Shattuck Hospital and Children's Medical Center, 1956-present; director, environmental health and safety, Harvard University Health Service, 1958-present; lecturer in medicine, Medical School, Tufts University, 1965-present; visiting professor, University of British Columbia, 1972-1978. Societies: AAAS, American Physiology Society; American Public Health Association; American Epidemiological Society; International Epidemiological Association. Research: Effects of airborne pollutants on human health; low levels of air pollution and exposures at work.

Kelman, Arthur, professor and chairman, Department of Plant Pathology, University of Wisconsin, Madison, Wisconsin. Expertise: phytopathology. Born: December 11, 1918. Education: University of Rhode Island, BS, 1941; North Carolina State University, MS, 1946; PhD (plant pathology), 1949. Honorary degree: Doctor of Science, University of Rhode Island, 1977. Professional experience: instructor to professor of plant pathology, North Carolina State University, 1948-1962; Reynolds Distinguished Professor Plant Pathology, 1962-1965; professor and chairman of department, 1965-1975; L. R. Jones Distinguished Professor of Plant Pathology, University of Wisconsin-Madison, 1975-present; professor of bacteriology, 1978-present. Concurrent positions: Visiting investigator, Rockefeller Institute, 1953-1954; visiting lecturer, American Institute of Biological Science, 1958-1960; NSF senior fellow, Cambridge University, 1971-1972. Honors and Awards: Fellow Award, American Phytopathology Society, 1969. Societies: National Academy of Science; American Academy of Arts and Science; American Institute of Arts and Science; American Institute of Biological Scientists; Society of General Microbiology, International Society of Plant Pathologists (vice president, 1968-1973; president, 1973-1978). Research: Physiology of parasitism, bacterial diseases of plants.

King, Donald West, Jr. Richard T. Crane distinguished professor, Department of Pathology, University of Chicago. Expertise: pathology. Born: June 30, 1927. Education: Syracuse University, MD, 1949. Professional experience: resident and instructor of pathology, College of Physicians and Surgeons, Columbia University, 1949-1952; professor and chairman of department, University of Colorado, Denver, 1961-1967; Delafield professor of pathology and chairman of department, College of Physicians and Surgeons, Columbia University, 1967-1981; dean, Division of Biological Science, 1982-1987; Richard T. Crane, distinguished professor, Department of Pathology, University of Chicago, January 1988-present. Concurrent positions: U.S. Public Health Service fellow, University of Chicago, 1954-1955 and Carlsberg Lab, 1955-1956. Societies: American Society of Experimental Pathologists; Society of Cell Biologists; Human Genetics Society; American Association of Pathologists and Bacteriologists. Research: Cell injury, membrane transport.

Longnecker, Daniel Sidney, professor, Department of Pathology, Dartmouth Medical School. Expertise: Pathology. Born: June 8, 1931. Education: State University of Iowa, AB, 1954; MD, 1956; MS, 1962. Professional experience: Assistant to associate professor, University of Iowa, 1961-1969; associate professor, School of Medicine, St. Louis University, 1969-1972; professor of pathology, Dartmouth Medical School, 1972-present. Concurrent Positions: NIH special fellow, Department of Pathology, University of Pittsburgh, 1965-1967; U.S. Public Health Service research grants, University of Iowa, 1967-1969, St. Louis University, 1969-1971 and Dartmouth College, 1975-present; visiting assistant professor, Department of Pathology, University of Pittsburgh, 1965-1967. Societies: American Society of Clinical Pathologists; International Academy of Pathologists; Society of Experimental Biology and Medicine; American Association of Pathologists; American Association for Cancer Research. Research: Biochemical mechanisms of cell injury; experimental pancreatitis; chemical carcinogenesis.

Magee, Peter Noel, Director, Fels Research Institute, Temple School of Medicine. Expertise: Pathology. Born: December 21, 1921. Education: Workshop College Cambridge University, 1940-1942, M.B., University College Hospital, London, 1945. Professional experience: house physician, University College Hospital, Kent and Sussex Hospital, 1946-1947;

Graham scholar in pathology University of London, University College Hospital Medical School, 1951-1953; member, science staff, toxicology research unit Medical Research Council Labs, Carshalton, Surrey, 1953-1968; Philip Hill professor of experimental biochemistry University of London at Courtault Institute of Biochemistry, Middlesex Hospital Medical School, 1967-1975; director, Fels Research Institute, Temple University Medical School, Philadelphia 1975-present. Concurrent positions: Member, grand council Cancer Research Campaign of Great Britain, 1972-present. Awards: Johann Georg Zimmerman Science prize for cancer research Medizinische Hochschule, Hannover, 1975. Societies: British Medical Association; American Association of Pathologists; American Association for Cancer Research; Pathologists Society of Great Britain and Ireland; Biochemical Society (United Kingdom), Society of Toxicology; International Academy of Environmental Safety.

Porter, Warren Paul, professor of zoology, University of Wisconsin, Madison. Expertise: Ecology. Born: January 26, 1939. Education: University of Wisconsin-Madison, BS, 1961; University of California, Los Angeles, MA, 1963; PhD (ecology), 1966. Professional experience: NIH research associate, Washington University, 1966-1968; from assistant to associate professor, 1968-1974; professor of zoology, University of Wisconsin, Madison, 1974-present. Societies: AAAS; Ecological Society of America. Research: Animal-physical environmental interactions; system modeling of large and small ecosystems.

Scarpelli, Dante Giovanni, chairman, Department of Pathology, Northwestern University Medical School. Expertise: experimental pathology. Education: Baldwin Wallace College, BS, 1950; Ohio State University, MS, 1953; MD, 1954; PhD, 1960. Professional experience: instructor to professor of pathology, Ohio State University, 1958-1966; dean, facilities and academic affairs, University Kansas Medical Center, Kansas City, 1973-1974; professor, pathology and oncology and chairman of department, 1966-1976; professor, pathology and chairman of department, Northwestern University Medical School, Chicago, 1976-present. Honors and awards: Silver Medal, American Society of Clinical Pathologists, 1956. Societies: AAAS; American Society of Clinical Pathologists; American Association of Pathologists; Histochemical Society; Society of Experimental Biology and Medicine.

Research: Ultrastructural cytochemistry; carcinogenesis; comparative pathology.

Seliger, Howard Harold, Professor, Department of Biology, John Hopkins University, Baltimore, Maryland. Expertise: Physics, photobiology. Born: December 4, 1924. Education: City College of New York, BA, 1943; Purdue University, MS, 1948; University of Maryland, PhD (physics), 1954; professor/leader, radioactivity, National Bureau of Standards, 1948-1958; research associate, biophysics, 1958-1963; associate professor, 1963-1968, professor, biology, Johns Hopkins University, 1968-present. Concurrent positions: Guggenheim fellow, 1958-1959; consultant, Office of Naval Research, 1963-1965; member, committee on biological effects increased solar ultraviolet, National Academy of Science, 1981. Honors and awards: Meritorious Service Award, U.S. Department of Commerce, 1958. Societies: AAAS, American Physics Society, Radiation Research Society, American Society of Biological Chemists, American Society of Photobiologists. Research: Radioactivity standardization; bioluminescence; excited states of biological molecules; marine biology of bioluminescent dinoflagellates; photometry.

Wilkinson, Christopher F., Director, Institute for Comparative and Environmental Toxicology, Cornell University, Ithaca, New York. Expertise: Entomology. born: February 9, 1938. Educational background: University of Reading, BS 1961; University of California, Riverside, PhD (entomology) 1965. Professional experience: United Kingdom Civil Service Commission, senior resident fellow, insecticide chemistry, Pest Infestation Lab, Agricultural Research Council, England, 1965-1966; from assistant professor to associate professor, 1966-1978; professor of insect toxicology, Cornell University, 1978-present. Societies: Society of Toxicologists; Entomological Society of America; Chemical Society; British Biochemistry Society. Research: Structure-activity relationships and mode of action of synergists; biochemistry; comparative biochemistry of microsomal drug metabolism.

Dated: August 9, 1988.

John A. Moore,
Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-18589 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3430-2]

Proposed Administrative Penalty Assessment and Opportunity To Comment; Chevron U.S.A. Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed Administrative Penalty Assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures. The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Guidance. The deadline for submitting public comment on a proposed Class I order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Chevron U.S.A. Inc., Port Allen Terminal, Port Allen Road, Port Allen, Kauai, Hawaii 96705; EPA Docket No. IX-FY88-48; filed on Aug. 5, 1988 with the Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-8038; proposed penalty, \$20,000, for violations of NPDES Permit No. HI 0020982, issued June 1, 1986, relating to the discharge of effluent containing oil and grease in excess of that permitted into the Pacific Ocean at Port Allen Terminal.

FOR FURTHER INFORMATION:

Persons wishing to receive a copy of EPA's Guidance, review the Complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and

the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide an opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: Aug 5, 1988.

Harry Seraydarian,
Director, Water Management Division.
[FR Doc. 88-18586 Filed 8-16-88; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3430-3]

Proposed Administrative Penalty Assessment and Opportunity To Comment; Lihue Plantation Co., Ltd.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed Administrative Penalty Assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22 as amended at 52 FR 30671 (Aug 17, 1987). The procedures through which the public may submit written comment on a proposed Class II order or participant in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On the date identified below, EPA commenced the following Class II proceeding for for the assessment of penalties:

In the Matter of Lihue Plantation Company, Limited, P.O. Box 751, Lihue, Kauai, Hawaii; EPA Docket No. IX-FY88-52; filed on August 5, 1988, with Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-8036; proposed penalty, \$30,000, for unauthorized discharges, and violation five NPDES Permit conditions of NPDES No. HI0000124, issued October 29, 1982.

FOR FURTHER INFORMATION:

Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will not issue its final order assessing a penalty in these proceedings until thirty days after the publication of this notice.

Dated: August 5, 1988.

Harry Seraydarian,
Director, Water Management Division.

[FR Doc. 88-18587 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3430-4]

Proposed Administrative Penalty Assessment and Opportunity To Comment; McBryde Sugar Co., Ltd.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed Administrative Penalty Assessment and Opportunity to Comment; McBryde Sugar Co., Ltd.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the

proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of McBryde Sugar Company, Ltd., P.O. Box 8 Elele, Kauai, Hawaii 96705; EPA Docket No. IX-FY88-51; filed on Aug. 5, 1988, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-8036; proposed penalty, \$40,000, for two unauthorized discharges and violation of four conditions of permit for McBryde Sugar Plantation, NPDES No. HI 0000361, issued October 29, 1982.

FOR FURTHER INFORMATION CONTACT:

Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will not issue its final order assessing a penalty in these proceedings until thirty days after the publication of this notice.

Dated: August 5, 1988.

Harry Seraydarian,
Director, Water Management Division.

[FR Doc. 88-18588 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00271; FRL-3429-1]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting of Working Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD) of the State-FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATES: Monday, September 12, and Tuesday, September 13, 1988, beginning at 8:30 a.m. each day and concluding by 3:30 p.m. Tuesday, September 13.

ADDRESS: The meeting will be held at: Hyatt Regency-Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703-486-1234).

FOR FURTHER INFORMATION CONTACT:

By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M Street, SW.,

Office of location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703)-557-7096).

SUPPLEMENTARY INFORMATION: This will be the seventh meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD). The purpose of the WC/GPD is to consider pesticide-related aspects of ground water protection and disposal of pesticide waste, excess pesticides and used pesticide containers, and to make recommendations through the full SFIREG regarding Agency policies in these key areas. The focus of the meeting will be primarily on ground water topics on September 12 and on disposal matters on September 13. The following topics are currently on the agenda.

1. The National Survey of Pesticides in Drinking Water Wells.
2. Groundwater Restricted Use Rule.
3. Agricultural Chemicals in Groundwater Strategic Plan:
 1. Plans for fall workshops;
 2. Discussion or comments received on plan.
4. State Management Plans for protection of groundwater from aldicarb.
5. Part 165 Rule (Storage and Disposal): Discussion of concepts paper.
6. Status of EDB, 2,4,5-T/Silvex and dinoseb disposal efforts.
7. Other topics as appropriate.

Dated: August 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-18376 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100057; FRL-3429-4]

Syracuse Research Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) will perform work specified under an EPA contract. This work will be done for the EPA Environmental Criteria and Assessment Office, and will require access to certain information submitted to EPA under FIFRA and FFDCA. This information may have been claimed as confidential business information (CBI) by submitters. This information will be transferred to SRC as authorized by 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), respectively. This action will enable SRC to fulfill the terms of the contract, and serves to notify affected persons.

DATE: SRC will be given access to this information no sooner than August 24, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-C8-0004, SRC will be preparing, updating, and evaluating various scientific documents and reports which will be used in the assessment of the nature and degree of hazard/risk posed by chemical pollutants for the EPA Environmental Criteria and Assessment Office. These reports will include accurate summaries of available data in the areas of acute toxicity, chronic and subchronic toxicity, and other reproductive effects. SRC's work for the next 12 months involves a selected group of chemicals, some of which are used in pesticides. A list of

the pesticide chemicals appears below. Other chemicals may be included in SRC's work later in this contract. Readers may contact the person named above in approximately one year to learn if chemicals other than those on this list will be involved in this contract. This contract involves no subcontractors.

Disulfotol
Endothall
Thiofanox
Thiram
Alachlor
Aniline
1,3-dichloropropene (Telone II)
Ethylene Dibromide
Fomesafen
Hydrazine, Hydrazine sulfate
Oryzlin
Paraquat
1,1,1-trichloroethane
2,4,5-(trichlorophenoxy) propionic acid
Dimethyl phthalate
Pentachlorophenol
DDT
Dieldrin
Cacodylic acid
Cyclohexanone
Diethyl-p-nitrophenyl phosphate
Methylchlorocarbonate
Formic acid
Aldicarb
Creosote
Dimethipin (Harvade)
Folpet
Furmecyclox
Metolachlor
Oxidimethiin
Parathion
Trifluralin
Xylenes
Diethyl phthalate
Methoxychlor
Chloroform
DDE
Toxaphene
Crotonaldehyde
Dibutyl phthalate
Maleic hydrazide

The Environmental Criteria and Assessment Office and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract and these evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. This information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), SRC shall not use

the information for any purpose other than purpose(s) specified in the contract; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, SRC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to SRC until the above requirements have been fully satisfied. Records of information provided to SRC will be maintained by the Project Officer for this contractor in the EPA Environmental Criteria and Assessment Office. All information supplied to SRC by EPA for use in connection with this contract will be returned to EPA when SRC has completed its work.

Dated: August 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-18459 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0201]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Certain Benzodiazepine Drugs; Certain Controlled Substances Analog Drugs

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its receipt of a notification from the Secretary-General of the United Nations. The notification requests interested person to submit data or comments concerning abuse potential, actual abuse, medical usefulness, and trafficking of 13 various drug substances. A previous notification from the World Health Organization (WHO) requested similar information on the same 13 substances and was the subject of an earlier Federal Register notice. The purpose of the present notice is to assure full compliance with the provisions of the Controlled Substances Act (CSA). Any additional information received pursuant to this notice will also

be considered in preparing a response from the United States to WHO.

DATE: Comments by September 1, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1392.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances (the Convention). The CSA (21 U.S.C. 811 *et seq.*—Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when the Secretary-General of the United Nations notifies the United States under Article 2 of the Convention on Psychotropic Substances that WHO has information that may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State shall transmit the notice to the Secretary of Health and Human Services (HHS). The Secretary of HHS shall then publish the notice in the *Federal Register* and provide opportunity for interested persons to submit comments to assist HHS in preparing scientific and medical evaluations about the drug or substance. As discussed below, HHS has received such a notification from the Secretary-General of the United Nations.

I. Background

A notice published in the *Federal Register* of June 15, 1988 (53 FR 22386), requested essentially the same information on the same 13 substances that are listed in the Secretary-General's notification. FDA has received responses to the June 1988 notice, and those responses are acceptable for the purposes of the present notice. However, the June 1988 notice referenced a notification other than the official United Nations notification from the Secretary-General, and included two substances (diazepam and delta-9-tetrahydrocannabinol) that are not included in the official notification. Because section 811(d)(2)(A) of the CSA requires HHS to publish the official notification from the Secretary-General, it is reproduced below in order to assure full compliance with the GSA.

II. Notification

The Secretary of HHS received the following notice from the Secretary-General, United Nations:

Reference: NAR/CL.8/1988; DND 411/1(2) WHO/ECDD 26

[The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America] and has the honour to draw attention to a request from the Director-General of the World Health Organization for assistance in obtaining data on the following thirteen substances:

Benzodiazepines

1. Brotizolam
2. Etizolam
3. Midazolam
4. Quazepam

Analogues of controlled substances

5. Alfa-methylthiofentanyl
6. Para-fluorofentanyl
7. Beta-hydroxyfentanyl
8. Beta-hydroxy-3-methylfentanyl
9. Thiofentanyl
10. 3-methylthiofentanyl

Analogues of MDA

11. N-hydroxy MDA
12. N-ethyl MDA (MDE)
13. 4-methyl Aminorex

The WHO 26th Expert Committee on Drug Dependence (ECDD), to be convened in April 1989, will examine the thirteen substances listed above to determine if any proposals should be made concerning their scheduling.

Under the new review procedures adopted by WHO, the ECDD is responsible for making scheduling recommendations to the Director-General of WHO. In this connection, it would be appreciated if the Government would submit data on any of the thirteen substances. It would greatly assist the Secretary-General if such data were submitted on a substance-by-substance basis following the outline contained in the questionnaire attached to the present note as an annex.

In view of the fact that data provided by Governments will be used by WHO in the preparation of a report on this subject for a WHO review group which will meet well in advance of the 26th ECDD, it would be very much appreciated if information could be transmitted to the Secretary-General at the Government's earliest convenience and preferably before 31 July 1988. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria.
15 April 1988.

United Nations Division of Narcotic Drugs,
Vienna International Centre A-1400 Vienna,
Austria

Questionnaire for Data Collection for Use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council
Substance Reported On:

1. Does the substance have any licit medical, veterinary, scientific or commercial use in the reporting country? If so, please

describe in general terms the extent of such use.

2. Are any control measures applied to the substance at the national level? If so, please describe briefly.

3. Please describe the extent of any known abuse of the substance in the reporting country, including the degree of seriousness of the public health and social problems¹ associated with abuse of the substance.

4. Please give data on any known or presumed illicit traffic in the substance, including the number of seizures of the substance and the quantities involved, as well as the existence of any clandestine laboratories manufacturing the substance.

III. Opportunity To Submit Domestic Information

As required by 21 U.S.C. 811(d)(2)(A), FDA on behalf of HHS invites interested persons to submit data or comments regarding the above-named 13 drugs. Data and information received in response to this notice will be used to prepare scientific and medical information on these drugs, with a particular focus on each drug's abuse liability. HHS will forward that information, together with the information regarding the above-named 13 drugs received in response to the June 1988 notice, to WHO, through the Secretary of State, for WHO's consideration in preparing a report for presentation to a WHO review group, which will evaluate the need for international control or modification of the existing international control of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs, and could impose certain recordkeeping requirements on them.

HHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in the second half of 1989. Any HHS position regarding international control of these drugs will be preceded by another *Federal Register* notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

¹ Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behaviour problems, criminality, etc. For a thorough examination of the question please refer to the WHO publication entitled "Assessment of Public Health and Social Problems Associated with the Use of Psychotropic Drugs" (No. 556 in the WHO Technical Report Series) and Chapter 7 of the WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances". Geneva, 25 April 1988

Interested persons may, on or before September 1, 1988, submit to the Dockets Management Branch (address above) written comments regarding this action. This abbreviated comment period is appropriate in light of the previous notification and the time required for HHS to prepare materials to meet the deadline imposed by the Secretary-General.

Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice contains information collection requirements that were submitted for review and approval to the Director, Office of Management and Budget (OMB). The requirements were approved and assigned OMB control number 0910-0226.

Dated: August 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-18613 Filed 8-16-88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities for Grants for Preventive Medicine Residency Training Programs

The Health Resources and Services Administration announces that applications for Fiscal Year 1989 Grants for Preventive Medicine Residency Training Programs are now being accepted under the authority of section 793 of the Public Health Service Act, as amended by Pub. L. 99-129 and invites comments on the proposed funding priorities described below.

Section 793 authorizes the award of grants to accredited schools of medicine, osteopathy and public health to meet the costs of projects to:

- (1) Plan and develop new approved residency training programs and to maintain or improve existing approved residency training programs in preventive medicine; and
- (2) Provide financial assistance to residency trainees enrolled in such programs.

Legislative authorization for this program September 30, 1988. For FY 1989 the Administration is proposing to consolidate the various health

professions categorical programs into a single, flexible grant authority. This announcement is being made in the event that the Preventive Medicine Residency Program is reauthorized and funds are made available in FY 1989. Publication of this notice is a contingency measure that will assure that grants can be awarded in a timely fashion consistent with the needs of the programs, as well as to provide for even distribution of funds throughout the fiscal year.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the training purposes of section 793 of the PHS Act;
2. The extent of responsiveness to the project requirements;
3. The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;
4. The degree to which the proposed training program emphasizes health promotion and disease prevention;
5. The degree to which the applicant demonstrates institutional commitment to the proposed program; and
6. The history of the program including number of residents who successfully completed the program.

Proposed Funding Priorities

In order to emphasize the initiative of health promotion/disease prevention and to encourage improvement of the quality of residency training experiences, three funding priorities are proposed. In the funding of approved applications, it is proposed that priority be given to projects which will:

- (1) Increase enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent of demonstrated net increase of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in postgraduate year (PGY) trainees. These population groups continue to be underrepresented in the medical profession. Studies show that minority physicians are more likely than others to provide health care for medically underserved populations. Therefore, this funding priority is

designed to increase the number of primary care underrepresented minority physicians.

(2) Conduct residency training in areas of general preventive medicine or public health. This priority is designed to promote the training of individuals in general preventive medicine or public health who are needed to implement the Secretary's initiatives in health promotion and disease prevention.

(3) Train at least four residents in the academic year and four residents in the field year and provide evidence that the projected number can be realized from a current or projected applicant pool.

This priority is designed to encourage further expansion of the number of residents in training in view of the continuing shortage of preventive medicine specialists and a larger cohort of trainees should provide a more stimulating environment. This priority is also designed to encourage applicants to enroll a minimum number of residents and to stimulate an educational atmosphere that a good peer group normally provides.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, the comment period has been reduced to 30 days. All comments received on or before September 16, 1988, will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the funding priorities will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays, (Federal holidays excepted), between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D33), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

If additional programmatic information is needed, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-16, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-8820.

The application deadline date is September 30, 1988. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on before the deadline and received in time for submission to the independent review group.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 13.117 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Program (as implemented through 45 CFR Part 100).

Dated: July 11, 1988.

David N. Sundwall,
Administrator, Assistant Surgeon General.
[FR Doc. 88-18615 Filed 8-16-88; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1846]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its

proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 8, 1988.

David S. Cristy,
Deputy Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: National Recognition Program for Urban Development Partnerships (Entry Form).

Office: Community Planning and Development.

Description of The Need For The Information and its Proposed Use: The HUD National Recognition Program seeks to identify communities which have used Community Development Block Grant funds to generate exemplary public/private partnerships. Cities, public interest groups, and private organizations are being asked to recommend projects. HUD will identify final group of projects for special commendation by the President and the Secretary of HUD.

Form Number: HUD-40002.

Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application.....	400		1		2.5		1,000

Total Estimated Burden Hours: 1,000.
Status: Extension.

Contact: Charles Bien, HUD, (202)
755-6587, John Allison, OMB, (202) 395-
6880.

Date: July 28, 1988.

[FR Doc. 88-18599 Filed 8-16-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Establishment of New Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new notice describing a system of records administered by the Office of Information Resources Management, Office of the Secretary. The notice is entitled "Telephone Call Detail Records—Interior, Office of the Secretary—36" and describes records used to identify and eliminate the misuse of Government telephone systems. The notice is published in its entirety below.

As required by section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget in its Circular A-130 requires a 60-day period to review such proposals. Therefore, written comments on this proposal can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received within 60 days of publication in the Federal Register will be considered. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Date: August 8, 1988.

INTERIOR/OS-36

SYSTEM NAME:

Telephone Call Detail Records—
Interior, Office of the Secretary—36.

SYSTEM LOCATION:

U.S. Department of the Interior (DOI) and bureau offices nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally Department, bureau/office, and contractor employees) who make long distance calls and individuals who received telephone calls placed from or charged to DOI telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of DOI telephone systems to place long distance calls; records indicating assignment of telephone numbers of employees; and records relating to the location of telephones. Telephone calls made to the Department's Office of Inspector General Hotline number are excluded from the records maintained in this system pursuant to the provisions of 5 U.S.C., Appendix 3, Section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 1348 (b), which prohibits agencies from using appropriated funds to pay for personal calls; 44 U.S.C. 3101, which authorizes agencies to create and preserve records documenting agency organizations, functions procedures and transactions; and 41 CFR 201-38.007, which limits the use of Government telephone systems to the conduct of official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records and data may be disclosed as is necessary, (1) to Members of Congress to respond to inquiries made on behalf of individual constituents that are record subjects; (2) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906; (3) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; (4) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (5) in the event that material in the system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency,

whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto; (6) to employees of the Department to determine responsibility for telephone calls and to resolve any disputes and facilitate the verification of discrepancies relating to billing, payment, or reconciliation of telephone operational or accountability records; (7) to provide access to all telephone records to Office of Inspector General auditors, investigators, and such other employees authorized by the Inspector General, pursuant to the authority of Sections 4 and 6 of the Inspector General Act of 1978; (8) to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter; (9) to a telecommunications company providing telecommunications support to permit servicing the account.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

Storage: Record data on computer processing media or paper files.

Retrievability: Records are retrieved by employee name, telephone number, identification number, or by a account code.

Safeguards: Access to the records is limited to Government employees who have an official need to use the records in the performance of their duties. Records are stored in a controlled area and maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and paper records. Automated records are protected from unauthorized access through password identification procedures and other systems based protection methods.

Retention and disposal: Records are disposed of as provided in the National Archives and Records Administration General Records Schedule 12.

Systems managers and address:

Fish and Wildlife Service, Chief,
Division of Information Resources
Management, Room 801, 1730 K Street
NW., Washington, DC 20240 (202) 653-
7464.

(2) U.S. Geological Survey, Chief,
Branch of Telecommunications Services,
12201 Sunrise Valley Dr., Mail Stop 809,
Reston, VA 22092 (703) 648-7006.

(3) Bureau of Indian Affairs,
Telecommunications Manager, Office of
Facilities Management, P.O. Box 1248,
Albuquerque, NM 87103 (505) 766-2846.

(4) Minerals Management Service,
Chief, Safety and Facilities Management
Branch, Mail Stop 635, 1110 Herndon
Parkway Building, Herndon, VA 22070
(703) 435-6220.

(5) Bureau of Mines,
Telecommunications Manager, 5th Floor,
2401 E Street, Washington, DC 20240
(202) 634-1032.

(6) Bureau of Reclamation,
Telecommunications Manager, Denver
Federal Center, Code D7900, P.O. Box
25007, Denver, Colorado 80225 (303) 236-
0970.

(7) Office of the Secretary, Office of
Administrative Services, Chief, Branch
of Telecommunications Management,
Room 1449, 18th & C Streets, NW,
Washington, DC 20240 (202) 343-1412.

(8) Office of Surface Mining
Reclamation & Enforcement,
Telecommunications Manager, Room
5131, 1100 L Street, Washington, DC
20240 (202) 343-5447.

(9) National Park Service, Chief,
Telecommunications Engineering, P.O.
Box 25287, Denver, CO 80225 (303) 969-
2084.

(10) Bureau of Land Management,
Chief, Branch of Telecommunications,
Mail Stop 208 Pmr, 18th & C Street, NW,
Washington, DC 20240 (202) 653-8853.

(11) Office of Inspector General
Administration, 18th & C Street, NW.,
Room 5346, Washington, DC 20240 (202)
343-4356.

NOTIFICATION PROCEDURE:

Requests for notification regarding the
existence of call detail report
information should be addressed to the
appropriate system manager. A written
and signed request stating that the
requester seeks information concerning
call records pertaining to him/her is
required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access to call detail
information should be addressed to the
appropriate system manager. All
requests must be in writing and meet the
content requirements of 43 CFR 2.63.

CONTESTING RECORD REQUIREMENTS:

A petition for amendment shall be
addressed to the appropriate system
manager, and meet the requirements of
43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call
detail listings; results of administrative
inquiries relating to assignment of
responsibility for placement of specific
long distance calls.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-18567 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-RH-M

Bureau of Land Management

[AK-965-4213-15]

Alaska Native Claims Selection; Shishmaref Native Corp.

In accordance with Departmental
regulation 43 CFR 2650.7(d), notice is
hereby given that a decision to issue
conveyance under the provisions of
section 14(a) of the Alaska Native
Claims Settlement Act of December 18,
1971, 43 U.S.C. 1601, 1613(a), will be
issued to Shishmaref Native
Corporation. The lands involved are in
the vicinity of Shishmaref, Alaska.

Within Sec. 23, T. 10 N., R. 35 W.,
Keteel River Meridian (unsurveyed).

A notice of the decision will be
published once a week, for four (4)
consecutive weeks, in *The Nome
Nugget*. Copies of the decision may be
obtained by contacting the Alaska State
Office of the Bureau of Land
Management, 701 C Street, Box 13,
Anchorage, Alaska 99513 ((907) 271-
5960).

Any party claiming a property interest
which is adversely affected by the
decision, an agency of the Federal
government, or regional corporation,
shall have until September 16, 1988 to
file an appeal. However, parties
receiving service by certified mail shall
have 30 days from the date of receipt to
file an appeal. Appeals must be filed
with the Bureau of Land Management at
the address identified above, where the
requirements for filing an appeal may be
obtained. Parties who do not file an
appeal in accordance with the
requirements of 43 CFR Part 4, Subpart
E, shall be deemed to have waived their
rights.

Elizabeth Bonnell,

Acting for Chief, Branch of Northwest
Adjudication.

[FR Doc. 88-18640 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-JA-M

Proposed Lease; California

SUMMARY: The proposed action is a
Notice of Realty Action for a lifetime
lease, intended to resolve a long-
standing occupancy trespass, to bring
occupancy under terms of section 302 of
the Federal Land Policy and
Management Act (FLPMA) of 1976, and
43 CFR 2920. The legal description of the
site is:

Mount Diablo Meridian

T. 31 N., R. 12 W., Section 24, NW 1/4 NE 1/4;
portion of

DATES: On or before October 3, 1988,
interested parties may submit comments
to the Area Manager, Bureau of Land
Management, 355 Hemsted Drive,
Redding, California 96002. Any adverse
comments will be evaluated by the State
Director, who may vacate or modify this
Realty Action and issue a final
determination. In the absence of any
action taken by the State Director, this
Realty Action will become the final
determination of the Department of
Interior.

FOR FURTHER INFORMATION CONTACT:
Mark Morse, Area Manager, at (916)
246-5325, or write to 355 Hemsted Drive,
Redding, California 96002.

SUPPLEMENTARY INFORMATION: An
appraisal has been made for the
proposed lease area, and the lessee will
be required to make yearly rental
payments.

The only application that will be
accepted will be from Mrs. Wilma
Knowlton. The application must include
reference to this notice, include the case
file number (CA 20170), and have a
complete description of the facilities
involved. This can be accomplished by
providing details of the proposed use
and activities; a description of all
facilities; a map of sufficient scale to be
legible; a legal description of the project
location (acreage); and any other
information that may aid in evaluating
the proposal.

Stipulations to be included with the
lease are as follows: (1) Subject
improvements must remain lessee's sole
place of residence; (2) lease may not be
transferred, assigned or inherited; (3)
upon the death of lessee, her heir, Tom
Divrell, will be allowed six months to
remove the improvements.

Mark T. Morse,

Area Manager.

[FR Doc. 88-18568 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-40-M

[Amdt. I-25693]

Idaho: Realty Action; Sale of Public Lands in Cassia County, Idaho

SUMMARY: This document amends the legal description, acreage, and appraised fair market value that were published July 21, 1988 (53 FR 27573).

FOR FURTHER INFORMATION CONTACT: Marvin Bagley, Associate District Manager, (208) 678-5514.

The July 21, 1988 (53 FR 27573) publication notice listed the legal description, acreage, and appraised fair market value as:

Legal description	Acreage	Appraised fair market value
T. 14 S., R. 22 E., B.M. section 4: SW¼SE¼.....	40	\$3,000

The legal description, acreage, and appraised fair market value are amended to read:

Legal description	Acreage	Appraised fair market value
T. 14 S., R. 22 E., B.M. section 4: W½SW¼SE¼, W½E½SW¼SE¼.....	30	\$2,500

Dated: August 8, 1988.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 88-18569 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-66-M

**Draft Resource Management Plan/
Environmental Impact Statement and
Proposed Areas of Critical
Environmental Concern for the San
Rafael Resource Area, Moab District,
UT**

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice of availability of draft resource management plan/
environmental impact statement.

SUMMARY: The draft resource management plan/environmental impact statement (RMP/EIS) for the San Rafael Resource Area, Moab District, Emery County, Utah and the Forest Planning Unit of the Sevier River Resource Area, Richfield District, Sevier County, Utah has been prepared for review and comment by the public, federal, state and local agencies, and Indian tribes. The RMP/EIS presents six land use alternatives for management of approximately 1.5 million acres of public land in Emery County and Sevier County, Utah. The draft EIS also covers certain grazing management decisions in the Henry Mountain Resource Area, Richfield District, Wayne County, Utah. Several areas of critical environmental concern (ACECs) are proposed under different alternatives.

The purpose of the RMP is to guide management of the public lands and resources in the San Rafael Resource Area and the Forest Planning Unit of the Sevier River Resource Area, Bureau of Land Management (BLM). A second purpose is to provide a grazing EIS as ordered by the United States District Court.

A 90-day review and comment period will commence with publication of Notice of Availability in the **Federal Register** by the Environmental Protection Agency (EPA). Four open houses will be held to discuss the draft RMP/EIS: September 20—Courthouse, Castle, Dale, Utah; September 22—Tamarisk Restaurant, Green River, Utah; September 27—City Hall, Huntington, Utah; and September 29—Salt Palace, Salt Lake City, Utah. All four open houses will be held from 3 to 8 p.m. To be considered in the final RMP/EIS, comments must be received in the San Rafael Resource area office within 90 days after publication of EPA's notice in the **Federal Register**.

This action is announced pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(a) of the Federal Land Policy

and Management Act of 1976, and 43 CFR Part 1610.

FOR FURTHER INFORMATION CONTACT:

James Dryden, San Rafael Resource Area Manager, BLM, 900 North 700 East, Price, Utah 84501; (801) 637-4584.

SUPPLEMENTARY INFORMATION: The San Rafael Draft RMP/EIS analyzes six alternative multiple-use management plans. Each plan provides management guidance for all relevant resource management programs administered by BLM in the planning area. Various combinations of special designations are analyzed under the alternatives.

Alternatives Analyzed

1. Alternative A (no action) presents the continuation of current management.

(2) Alternative B emphasizes the production of mineral resources and livestock forage.

(3.) Alternative C emphasizes opportunities for nonmotorized recreation and management of wildlife habitat to allow wildlife populations to attain prior stable numbers.

(4.) Alternative D emphasizes the protection of watershed values and maximum protection of cultural resources.

(5.) Alternative E emphasizes maximum access and opportunities for motorized recreation.

6. Alternative F (the preferred alternative) provides for the protection of critical soils, scenic resources within the San Rafael Swell, crucial wildlife habitat; special management for certain vegetation and cultural resource values; continuation of livestock, wild horse and burros use; and making public lands available for production of mineral resources.

Proposed ACECs: Nineteen areas are analyzed for special designation under various alternatives analyzed in the draft RMP/EIS. As a result of ACEC consolidation, 13 ACECs are nominated under F, the preferred alternative.

The special management designations are summarized in the accompanying table.

W.R. Papworth,
State Director, Utah.

TABLE 1.—NOMINATED AREA OF CRITICAL ENVIRONMENTAL CONCERN DESIGNATIONS, BY ALTERNATIVE

Area name	Acres by alternative					
	A	B	C	D	E	F
Bowknot Bend.....	0	1,830	1,830	1,830	1,830	1,830
Hebes Mountain.....	0	0	0	960	0	0
North Big Flat Top *.....	0	190	190	190	190	0
Big Flat Tops.....	0	0	0	0	0	2,640
San Rafael Reef.....	0	43,870	67,520	43,870	0	68,720
Copper Globe *.....	0	0	0	0	0	220
Dry Lake Archaeological District.....	0	0	16,990	16,990	16,990	16,990

TABLE 1.—NOMINATED AREA OF CRITICAL ENVIRONMENTAL CONCERN DESIGNATIONS, BY ALTERNATIVE—Continued

Area name	Acres by alternative					
	A	B	C	D	E	F
I-70 Pictographs *	0	30	(30)	0	(30)	0
Pictographs *	0	0	0	40	0	40
Little Black Mountain	0	0	0	2,160	0	0
Swasey Cabin	0	0	0	220	0	220
Temple Mountain Historic District	0	0	2,660	2,660	2,660	2,660
Tomeich Butte Historic District *	0	0	2,040	2,040	2,040	(2,040)
Gilson Buttes	0	0	1,750	1,750	0	0
I-70 Scenic Corridor	52,150	0	52,150	52,130	52,150	52,130
Muddy Creek	0	0	46,720	22,540	22,540	24,540
San Rafael Canyon	0	0	58,510	58,510	58,510	35,240
Segers Hole	0	0	7,120	7,120	0	7,120
Sids Mountain	0	0	89,060	89,060	0	81,870
Total	52,150	45,920	322,360	302,070	156,910	274,260

Note: All acreages are approximate and rounded to the nearest 10 acres.

* Under alternative F, the area name changes to Big Flat Tops.

* Under alternatives C and D, the Copper Globe area is part of the Sids Mountain ACEC.

* Under alternatives C and E, the I-70 Pictographs ACEC would be included as a special emphasis area within the I-70 Scenic Corridor.

* Under alternatives D and F, the Pictographs ACEC would include both the I-70 and Rochester pictograph sites.

* Under alternative F, the Tomsich Butte Historic District would be included as a special emphasis area within the Muddy Creek ACEC.

[FR Doc. 88-18591 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-DO-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contracting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-3470.

Title: Industrial Explosive and Blasting Agents.

OMB Approval Number: 1032-0066.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys (MIS), Minerals Yearbook Volumes I, II, and III, Mineral Facts and Problems, Mineral Commodity Summaries, Mineral Commodity Profiles, and Minerals and Materials/A Bimonthly Survey for use by private organizations and other government agencies.

Bureau Form Number: 6-1439-A.

Frequency: Annual.

Description of Respondents:

Producers of Industrial Explosive and Blasting Agents sold for consumption in the United States.

Estimated Completion Time: 1 hour.

Annual Responses: 10.

Annual Burden Hours: 10.

Bureau Clearance Officer: James T.

Hereford (202) 634-1125.

John Morgan,

Acting Director, Bureau of Mines.

[FR Doc. 88-18570 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-53-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2625, Block 37, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 8, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood

Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT:

Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 9, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-18641 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concession Contract Negotiations; Clyde, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Clyde, Inc., authorizing it to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 17, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 18, 1988.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-18634 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

Ellis Island-Statue of Liberty NM; Concession Contract Negotiations; Restaurant and Gift Shop Facilities

AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: Public Notice is hereby given that the National Park Service proposes to extend for thirty days the acceptance of applications for the concession opportunity to provide restaurant and gift shop facilities at Ellis Island, Statue of Liberty NM to September 19, 1988, in lieu of 90 days following the notice which appear in the "Federal Register", Vol. 53, No. 91, Wednesday, May 11, 1988, pages 16791 and 16792.

EFFECTIVE DATE: September 19, 1988.

ADDRESS: Interested parties should contact the Superintendent, Statue of Liberty National Monument, Liberty Island, New York, New York 10004 for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before September 19, 1988, to be considered and evaluated.

Date: August 11, 1988.

John J. Guthrie,

Acting Regional Director, North Atlantic Region.

[FR Doc. 88-18643 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations: Llewellyn Westerman

AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Llewellyn Westerman, authorizing him to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 17, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed his obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 18, 1988.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-18635 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations: Francis Smilowitz

AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Francis Smilowitz, authorizing him to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 17, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessions has performed his obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day of following publication of this notice to be considered and evaluated.

Dated: July 18, 1988.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-18636 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations: Teroro, Inc.

AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Teroro, Inc., authorizing it to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 17, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date, July 18, 1988.

C. W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-18637 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C., app. 1 s 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, September 9, 1988.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the

provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m. for the following reasons:

Unfinished Business
Dune Cottages
Superintendent's Report
Bicycle Study
New Business

The meeting is open to the public. It is expected that as many as 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Date: August 11, 1988.

John J. Guthrie,

Acting Regional Director.

[FR Doc. 88-18633 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-258]

Agricultural and Tropical Products; Literature Search Regarding Trade Distortions and Effect of Trade Liberalization, and Calculation of Tariff Equivalents

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for comments.

EFFECTIVE DATE: August 10, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Feinberg (202-252-1235), Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND: The Commission instituted investigation No. 332-258 on July 10, 1988, following receipt of a request from the United States Trade Representative on July 5, 1988, at the direction of the President, that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide a literature review in the areas of trade-distorting policies affecting agricultural and tropical products and trade

liberalization in the agricultural sector, and a calculation of tariff equivalents of border measures affecting these products in the major trading nations.

The letter from the United States Trade Representative requested the following information:

1. A review of publications and other writings, issued over approximately, the past five years by governments, international organizations, research institutes, scholars and other recognized authorities, which identify, analyze or assess trade-distorting policies or practices of the major trading nations in agricultural and tropical products, and which can be considered to have contributed significantly to the overall knowledge and assessment of the problems which distort world trade in these areas. This review should also provide a brief summary of the specific policies or practices which are indicated in these writings to be the most widespread and to produce the greatest distortions of trade.

2. A review of publications and other writings, issued over approximately the past five years, analyzing the probable effects of liberalization of the agricultural sector, including an assessment of these studies—in particular, their relevance to the proposals now under consideration in the Uruguay Round.

3. To the extent the requisite data can be obtained, a calculation of tariff equivalents of existing border measures, particularly quotas and variable levies, affecting agricultural and tropical products in the United States, Canada, the European Community, the European Free Trade Association, Japan, Argentina, Brazil and Korea.

The Commission's study is to be submitted as soon as possible but not later than April 5, 1989.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the matters to be addressed in the investigation. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be

assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than January 5, 1989. All submissions should be addressed to the Secretary of the Commission at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

By order of the Commission.

Issued: August 11, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-18659 Filed 8-16-88; 8:45 am]

BILLING CODE 7020-02-M

Service Sector Profiles and Barriers to Trade in Services

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: August 10, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Kollins (202-252-1441), Office of Industries, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND AND SCOPE OF INVESTIGATION

The Commission instituted Investigation No. 332-257, following receipt on July 14, 1988 of a letter from the United States Trade Representative (USTR), requesting, at the direction of the President, that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide information for use by USTR in connection with trade negotiations on services in the Uruguay Round of multilateral trade negotiations.

As requested by USTR, the Commission will provide reports containing the following information—

(1) A summary profile, based on the best available data, of eleven domestic service sectors (accounting and related services; advertising; construction; engineering, and architectural services; educational and training services; equipment rental and leasing; franchising; health and medical services; insurance; management consulting; telecommunications and information services; and tourism). According to USTR, this is a representative sample of

service sectors, whose selection for this purpose is based on the resources available to the Commission, time limitations, and information available from other sources.

(2) An identification and analysis of U.S. measures (State and Federal) which may impede foreign participation in the U.S. market for the eleven service sectors, and an assessment of the effect on U.S. service industries of removal of the impediments.

(3) A summary profile of certain service sectors in foreign countries and an assessment of the effect on U.S. service industries of the removal of foreign measures which impede U.S. participation in the respective foreign service markets. As requested by USTR, the Commission will prepare foreign industry profiles only for those countries in which restrictive measures are identified through an interagency process coordinated by USTR.

The USTR has requested that the Commission submit its report on (1) above within 6 months; on (2) within 9 months; and on (3) within 15 months.

WRITTEN SUBMISSIONS: No public hearing has been scheduled in this matter. However, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rule of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date, but no later than January 2, 1989. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal at (202) 252-1810.

By order of the Commission.

Issued: August 11, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-18660 Filed 8-16-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations No. 731-TA-378 (Final) and No. 701-TA-287 (Final)]

Certain Electrical Conductor Aluminum Redraw Rod from Venezuela

Determination

On the basis of the record¹ developed in the subject investigations, the Commission determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and § 1673d(b)), that an industry in the United States is threatened with material injury² by reason of imports from Venezuela of certain electrical conductor aluminum redraw rod,³ provided for in item 618.15 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold at less than fair value (LTFV) and to be subsidized by the Government of Venezuela. In addition, the Commission finds that it would not have found material injury to the domestic industry even if there had not been suspension of liquidation of entries of the merchandise.⁴

Background

The Commission instituted these investigations effective October 14, 1987 (countervailing duty), and March 28, 1988 (antidumping), following preliminary determinations by the Department of Commerce that imports of certain electrical conductor aluminum redraw rod, wrought rods of aluminum containing not less than 99 percent aluminum by weight, from Venezuela were being subsidized within the meaning of section 701, and were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1671 and 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 20, 1988 (53 FR 12997). The hearing was held in Washington, DC, on June 23,

¹ The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

² Vice Chairman Brunsdale and Commissioner Liebel dissenting.

³ The subject product comprises wrought rods of aluminum, the foregoing which are electrically conductive and contain not less than 99 percent of aluminum by weight.

⁴ This finding is made pursuant to 19 U.S.C. 1671d(b)(4)(B) and 1673d(b)(4)(B). If the Commission does not find material injury but does determine threat of material injury, it is required to find whether it would have found material injury "but for any suspension of liquidation of entries of the merchandise."

1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 5, 1988. The views of the Commission are contained in USITC Publication 2103 (August 1988), entitled "Certain Electrical Conductor Aluminum Redraw Rod From Venezuela: Determinations of the Commission in Investigations No. 701-TA-287 and 731-TA-378 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: August 5, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-18661 Filed 8-16-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-284]

Certain Electric Power Tools, Battery Cartridges and Battery Chargers; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 1, 1988, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on behalf of Makita USA, Inc., 12950 East Alondra Boulevard, Cerritos, California 90701-8775 and Makita Corporation of America, 650 Gainesville Highway, Buford, Georgia 30518. Supplements to the complaint were filed on July 7, 25, 27, and 29, 1988. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain electric power tools, battery cartridges and battery chargers into the United States, and in their sale, by reason of alleged: (1) Infringement of U.S. Registered Trademark No. 1,204,296; (2) infringement of common law trademarks; (3) false designation of sponsorship, source, or origin and false descriptions; (4) contributory infringement of, and inducement to infringe, Makita's common law and registered trademarks; (5) misappropriation of Makita's marks; (6) passing off; and (7) common law unfair competition. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure and/or prevent the establishment

of an efficiently and economically operated industry in the United States.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT:

Marcia H. Sundeen, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1573.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation. Having considered the complaint the U.S. International Trade Commission, on August 9, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain electric power tools, battery cartridges, and battery chargers into the United States, or in their sale, by reason of alleged: (1) Direct infringement of U.S. Registered Trademark No. 1,204,296; (2) direct infringement of common law trademarks; (3) false representation; (4) false advertising; and (5) passing off, the effect or tendency of which is to destroy or substantially injure and/or prevent the establishment of an efficiently and economically operated industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Makita U.S.A., Inc., 12950 East Alondra Boulevard, Cerritos, California 90701-8775

Makita Corporation of America, 650 Gainesville Highway, Buford, Georgia 30518

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint and this notice are to be served:

Ko Shin Electric & Machinery Co., Ltd., 228 Chung King North Road, Sec. 3, Taipei, Taiwan

P&F Brother Industrial Corporation, P.O. Box 46-26, Taichung, Taiwan

Nu-Way Machinery Corporation, P.O. Box 46-26, Taichung, Taiwan

Jiang Charng Machinery Works Co., Ltd., No. 89, Lane 109, Feng Lien Road, Feng Yuan, Taichung, Taiwan

Jenn Feng Industrial Co., Ltd., No. 19, Lane 118, Sec. 2 Min. TSU Rd., Ping Chang Shiang, Taoyuan, Taiwan
Kuen Master Industry Ltd., P.O. Box 179, Chia Yi, Taiwan
Homegene Corp., P.O. Box 87-93, Taipei, Taiwan
Honworld International Inc., P.O. Box 67-511, Taipei, Taiwan
Union-Tech Corp., 7F, No. 420, Keelung Rd., Sec. 1, Taipei, Taiwan
Ta Shin Electric Industrial Co. Ltd., P.O. Box 47-3, Taipei, Taiwan
Poromes Enterprise Co., Ltd., Room 3, 3rd Floor, No. 19, Fu-Hsing N. Rd., Taipei, Taiwan
New Golden Star Electric Works, Ltd., No. 12, Lane 185, Nan King W. Road, Taipei, Taiwan
Famous Overseas Corporation, Room 3, 6th Floor, 102 Tun Hua S. Road, Taipei, Taiwan
Tochiado, No. 1, Lane 111, Sec. 3, Chung Sun Road, Taichung, Taiwan
Puma Industrial Co., Ltd., 4070 Tugwell Ave., Franklin Park, Illinois 60131
Alltrade, Inc., 2140 Davie Avenue, Commerce, California 90040
Jepson, Inc., 23140 Kashiwa Court, Torrance, California 90505
Jet Equipment & Tools, Inc., 1901 Jefferson Avenue, Tacoma, Washington 98401
Home Depot, 2727 Paces Ferry Road, Atlanta, Georgia 30339
Harbor Freight Salvage Co., 3491 Mission Oaks Boulevard, Camarillo, California 93010-3169
Steve's Wholesale Distributor, 2423 South Walker, Oklahoma City, Oklahoma 73109
Trade Associates, Inc., 4310 B Street, N.W., Auburn, Washington 98001
Mechanics Products, Kent, Washington 98035
International Consumer Brands, Inc., 126 Monroe Turnpike, Trumbull, Connecticut 06611-1360
Atlas Group, 115 Lehigh Drive, Fairfield, New Jersey 07006
Tool City, 10562 Westminster Avenue Between Euclid and Brookhurst, Garden Grove, California 92643
Floyd Ready and Associates, 96 Shobota Drive, Jackson, Mississippi 39209
Ace Tool Company, 9099 Bank Street, Cleveland, Ohio 44125
Nestor Sales Company, 12340 66th Street, North Largo, Florida 33543
Pay N' Pak, 1209 South Central Avenue, Kent, Washington 98032
Pace Membership Warehouse, 3350 Peoria Street, Aurora, Colorado 80010
(3) Marcia H. Sundeen, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401K, Washington, DC 20436, shall be the Commission

Investigative Attorney, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission without further notice of the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: August 11, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-18658 Filed 8-16-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-289 (Final) and 731-TA-381-382 (Final)]

Certain Granite From Italy and Spain

Determinations

On the basis of the record¹ developed in the subject investigations, the

¹ The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Commission unanimously determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Spain of certain granite,² provided for in item 513.74 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Spain.

Further, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Italy and Spain of certain granite,² provided for in items 513.74 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted investigation No. 701-TA-289 (Final) effective December 24, 1987, following a preliminary determination by the Department of Commerce that imports of certain granite from Spain were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). The Commission instituted investigations Nos. 731-TA-381 and 382 (Final) effective February 29, 1988, following preliminary determinations by the Department of Commerce that imports of certain granite from Italy and Spain were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the Federal Register of March 24, 1988 (53 FR 9712) and of June 14, 1988 (53 FR 22230). The hearing was held in Washington, DC, on June 30, 1988, and all persons who requested the

opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 11, 1988. The views of the Commission are contained in USITC Publication 2110 (August 1988), entitled "Certain Granite from Italy and Spain: Determinations of the Commission in Investigations Nos. 701-TA-289 (Final) and 731-TA-381-382 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission:

Issued: August 11, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-18662 Filed 8-16-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-421
(Preliminary)]

Shock Absorbers and Parts, Components, and Subassemblies Thereof From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-421 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of shock absorbers,¹ provided for in item 692.32 of the Tariff Schedules of the United States (TSUS), and parts, components, and subassemblies thereof, however provided for in the TSUS, that are alleged to be sold in the United States at less than fair value.

As provided in section 733(a), the Commission must complete its

¹ For purposes of this investigation, the term "shock absorbers" is defined as suspension devices designed to dissipate energy from road disturbances; consisting of a piston, a fluid or gaseous medium, and a metal cylinder; primarily used in the suspension system on motor vehicles, provided for in item 692.322 of the Tariff Schedules of the United States Annotated (1987) (TSUSA); they are also provided for under subheading 8708.80.50 of the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

² For purposes of these investigations, the term "certain granite" refers to granite that is 3/4 inch (1 cm) to 2 1/2 inches (6.34 cm) in thickness, including the following: rough sawed granite slabs; face-finished granite slabs; and finished dimensional granite, including, but not limited to, building facing, flooring, wall and floor tiles, and crypt fronts. "Certain granite" does not include monumental stones, crushed granite, or curbing.

preliminary antidumping duty investigation in 45 days, or in this case by September 23, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: August 9, 1988.

FOR FURTHER INFORMATION CONTACT:

Jim McClure (202-252-1191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on August 9, 1988, by counsel on behalf of the Monroe Auto Equipment Co. Monroe, MI.

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 30, 1988, at the U.S. International Trade

Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-252-1191) not later than August 25, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before September 2, 1988 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission,

Issued: August 12, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-18663 Filed 8-16-88; 8:45 am]

BILLING CODE 7020-20-M

[Investigation No. 337-TA-254]

Certain Small Aluminum Flashlights and Components Thereof; Denial of Motion for Release of Physical Exhibits

AGENCY: International Trade Commission.

ACTION: Denial of motion by complainant Mag Instrument, Inc., for release of certain physical exhibits.

FOR FURTHER INFORMATION CONTACT:

Jack Simmons, Esq., Office of the General Counsel, Suite 707, U.S. International Trade Commission, 500 E

St., SW., Washington, DC 20436, telephone 202-252-1098. Hearing-impaired individuals may contact the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION:

Complainant has moved (Motion No. 254-131-C) that the Commission permit release of certain physical exhibits for use in federal court trial between the complainant and the Brinkmann respondents currently scheduled to begin September 6, 1988. The Commission has determined to deny the motion because its determination in the above-captioned investigation is now on appeal to the U.S. Court of Appeals for the Federal Circuit. The physical exhibits are part of the Commission's evidentiary record in the appeal, Fed. R. App. P. 16(a), and, although the record is physically located at the Commission, the Court may request that any portion of the record be forwarded to it at any time. Fed. Cir. R. 17(a).

Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

By order of the Commission.

Issued: August 8, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-18664 Filed 8-16-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-254]

Certain Small Aluminum Flashlights and Components Thereof; Denial of Motion for Release of Physical Exhibits

AGENCY: International Trade Commission.

ACTION: Denial of motion by certain respondents for release of certain physical exhibits.

FOR FURTHER INFORMATION CONTACT:

Jack Simmons, Esq., Office of the General Counsel, Suite 707, U.S. International Trade Commission, 500 E. St., SW., Washington, DC 20436, telephone 202-252-1098. Hearing-impaired individuals may contact the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION: The Brinkmann respondents have moved (Motion No. 254-132-C) that the

Commission permit release of certain physical exhibits for use in federal court trial between complainant Mag Instrument, Inc., and the Brinkmann respondents currently scheduled to begin September 6, 1988. The Commission has determined to deny the motion because its determination in the above-captioned investigation is now on appeal to the U.S. Court of Appeals for the Federal Circuit. The physical exhibits are part of the Commission's evidentiary record in the appeal, Fed. R. App. P. 16(a), and, although the record is physically located at the Commission, the Court may request that any portion of the record be forwarded to it at any time, Fed. Cir. R. 17(a).

Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

By order of the Commission.

Issued: August 11, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-18665 Filed 8-16-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-292 (Final)]

Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-292 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 167d(b)) to determine whether an industry of the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor,¹ provided

for in item 711.28 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Taiwan.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce is extending the date for its final determination in this investigation to coincide with the date of its final determination in an ongoing antidumping investigation on thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled for September 22, 1988).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-252-1185), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1809. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section

thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances), consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under Tariff Schedules of the United States Annotated item numbers 711.7820 and 711.7840 and under Harmonized System item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00.

701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor. The investigation was requested in a petition filed on April 15, 1988, by Triplex Inter Control (USA), Inc., St. Albans, VT. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 21532, June 8, 1988).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20.).

By order of the Commission.

Issued: August 11, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-18666 Filed 8-16-88; 8:45 am]

BILLING CODE 7020-02-M

¹ For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe

DEPARTMENT OF JUSTICE**Federal Bureau of Investigation****Establishment; Advisory Policy Board (APB), Uniform Crime Reporting (UCR)**

In accordance with the provisions of the Federal Advisory Committee Act, Title 5, United States Code, Appendix I (Supplement II, 1972), and 41 CFR 101-6.10, the Director, FBI, with the concurrence of the Attorney General, has determined that the establishment of the UCR APB is in the public interest in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of its establishment.

The Board will recommend to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the UCR, particularly the system's relationship with state and local criminal justice systems.

The Board will consist of 20 members from crime statistics providing agencies within the United States. Board members will be nominated by the International Association of Chiefs of Police (9), the National Sheriffs' Association (5), the National Academy Associates (2), and the Director of the FBI (4).

The Board will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its Charter will be filed in accordance with the provisions of the Act.

Date: August 11, 1988.

William S. Sessions,
Director.

[FR Doc. 88-18606 Filed 8-16-88; 8:45 am]
BILLING CODE 4410-02-M

DEPARTMENT OF LABOR**Office of the Secretary****Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget****Background**

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of

Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Department Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW; Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Assistant Secretary for Veterans' Employment and Training
Implementing Regulations for Veterans' Employment Programs under Title IV, Part C of the Job Training Partnership Act

1293-0001

Other (at time of application for grant)
State or local governments; non-profit institutions

85 responses; 2,720 hours; average hours per response 32 hours

The information is needed as the basis upon which the costeffectiveness of the program proposed by the grant application will be evaluated. It is the primary focus of the application for funding used for approving or denying the application for funds under Title IV-C of JTPA.

Extension

Employment Standard Administration
Request for Medical Reports

1215-0106; LS-158, LS-415, LS-525

On occasion

Businesses or other for-profit; small businesses or organizations 2520 respondents; 1,260 total hours; 30 minutes per response, 3 forms Medical reports are used by the Longshore and Harbor Workers' compensation Act program to support injured workers' claims for compensation benefits under section 7 of the Longshore Act (33 USC 901 et seq.) as amended and extended.

Signed at Washington, DC, this 11th day of August, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88-18536 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-79-M

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: September 14, 1988, 2:00 p.m.-5:00 p.m., Rm. N3437 A,B&C Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact:

Fernand Lavalley, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC, this 8th day of August 1988.

Eugene K. Lawson,

Deputy Under Secretary, International Affairs.

[FR Doc. 88-18533 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-26-M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review:

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or

reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions.

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

ETA Summaries—UI Trust Fund Activities

1205-0154; ETA 2112, 8401, 8403, 8405, 8413, 8414

Monthly

Form No.	Affected public	Respondents	Frequencies	Average time per response
ETA 2112.....	State/local Government.....	53	Monthly	30 mins.
ETA 8401.....	State/local Government.....	53	.....do	Do.
ETA 8403.....	State/local Government.....	18	.....do	Do.
ETA 8405.....	State/local Government.....	53	.....do	Do.
ETA 8413.....	Banks.....	53	.....do	Do.
ETA 8414.....	Banks.....	53	.....do	Do.

ETA report 8403 monitors Reed Act funds. ETA Reports 2112, 8401, 8405, 8413, and 8414 are used to monitor Unemployment Trust Fund cash flow, disbursement, measure cash management performance and regulate balances pertaining to unemployment benefits paid from Federal sources. These activities are coordinated with State government accounting systems.

Reinstatement

Mine Safety and Health Administration Permissible Equipment Testing 1219-0066

On occasion

Businesses and other for profit; small businesses or organizations

Estimated hours per application under Title 30 CFR:

Part II—Respiratory Protective Devices 40 hours per response

Part 15—Explosives and Related Articles

24 respondents, 40 hours per response, 960 hours

Part 18—Electrical Motor Driven Mine Equipment and Associates

2,866 respondents, 63 hours per response, 180,558 hours

Part 19—Electric Cap Lamps

20 respondents, 20 hours per response, 400 hours

Part 20—Electric Mine Lamps Other Than Standard Cap Lamps

17 respondents, 20 hours per response, 340 hours

Part 21—Flame Safety Lamps

6 respondents, 20 hours per response, 120 hours

Part 22—Portable Methane Detectors

19 respondents, 10 hours per response, 190 hours

Part 23—Telephones and Signaling Devices

40 respondents, 40 hours per response, 1,600 hours

Part 25—Multiple-Shot Blasting Units

4 hours per response

Part 27—Methane-Monitoring Systems

38 respondents, 20 hours per response, 760 hours

Part 28—Fuses for Use with Direct Current

11 respondents, 10 hours per response, 110 hours

Part 29—Portable Coal Dust/Rock Dust Analyst, and Continuous Duty, Warning Light Portable Methane Detector for Use In Coal Mines

1 respondent, 60 hours per response, 60 hours

Part 32—Mobile Diesel-Powered Equipment for Noncoal Mines

6 respondents, 64 hours per response, 384 hours

Part 33—Dust Collectors for Use In Connection with Rock Drilling In Coal Mines

67 respondents, 32 hours per response, 2,144 hours

Part 35—Fire-Resistant Hydraulic Fluids

5 respondents, 50 hours per response, 250 hours

Part 36—Mobile Diesel-Powered Transportation Gassy Non-coal Mines and Tunnels

55 respondents, 60 hours, 3,300 hours
Total Burden Hours, 161,176.

Contains procedures by which
manufacturers of mining equipment and
components, material, instruments, and

explosives may apply for, and have their
products approved as permissible for
use in mines.

Mine Safety and Health Administration

Annual Status Report and Certification
and Weekly Inspections of Refuse
Piles and Impoundments

1219-0015

Businesses and other for profit; small
businesses or organizations

Reporting/recordkeeping requirement	Respondents	Frequency	Average time per response
Annual Status Report and Certification	675	Annually	2 hours
Weekly Inspections with Monitoring Instruments	240	Weekly	3 hours
Weekly Inspections without Monitoring Instruments	360	.....do	2 hours

76,230 total hours

Requires coal mine operators to
submit to MSHA an annual status report
and certification on impoundments and
hazardous refuse piles; and to keep
records of the results of weekly
examinations and instrumentation
monitoring of impoundments.

Signed at Washington, DC, this 2nd day of
August, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88-18607 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-22-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Abtex, Inc., et al.

Petitions have been filed with the
Secretary of Labor under section 221(a)

of the Trade Act of 1974 ("the Act") and
are identified in the Appendix to this
notice. Upon receipt of these petitions,
the Director of the Office of Trade
Adjustment Assistance, Employment
and Training Administration, has
instituted investigations pursuant to
section 221(a) of the Act.

The purpose of each of the
investigations is to determine whether
the workers are eligible to apply for
adjustment assistance under Title II,
Chapter 2, of the Act. The investigations
will further relate, as appropriate, to the
determination of the date on which total
or partial separations began or
threatened to begin and the subdivision
of the firm involved.

The petitioners or any other persons
showing a substantial interest in the
subject matter of the investigations may
request a public hearing, provided such
request is filed in writing with the
Director, Office of Trade Adjustment
Assistance, at the address shown below,
not later than August 29, 1988.

Interested persons are invited to
submit written comments regarding the
subject matter of the investigations to
the Director, Office of Trade Adjustment
Assistance, at the address shown below,
not later than August 29, 1988.

Interested persons are invited to
submit written comments regarding the
subject matter of the investigations to
the Director, Office of Trade Adjustment
Assistance, at the address shown below,
not later than August 29, 1988.

The petitions filed in this case are
available for inspection at the Office of
the Director, Office of Trade Adjustment
Assistance, Employment and Training
Administration, U.S. Department of
Labor, 601 D Street, NW., Washington,
DC 20213.

Signed at Washington, DC, this 25th day of
July 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment
Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of Petition	Petition No.	Articles produced
Abtex, Inc. (Company).....	Houston, TX.....	7/25/88	7/6/88	20.822	Crude Oil.
Berol, USA (Workers).....	Fairlawn, NJ.....	7/25/88	7/15/88	20.823	Ballpoint Pen and Markers.
Caterpillar, Inc. (UAW).....	Davenport, IA.....	7/25/88	7/1/88	20.824	Components for Bulldozers, Tractors and Lift Trucks.
Caterpillar, Inc. (UAW).....	Bettendorf, IA.....	7/25/88	7/1/88	20.825	Components for Bulldozers, Tractors and Lift Trucks.
Cooper Lighting Group (IBEW).....	LaPalma, CA.....	7/25/88	7/1/88	20.826	Lighting Fixtures.
Ford Labs (Company).....	Moonachie, NJ.....	7/25/88	7/14/88	20.827	Vitamins.
Foster Canning Co. (Workers).....	Farmingdale, NJ.....	7/25/88	7/12/88	20.828	Processed Meat based Canned Dog and Cat Food.
George-Ann Fashions Co. (Workers).....	Swoyersville, PA.....	7/25/88	7/13/88	20.829	Children's & Ladies Blouses, Skirts and Dresses.
Humberland Dress Co. (Workers).....	Mt. Carmel, PA.....	7/25/88	7/11/88	20.830	Ladies's and Children's Dresses, Tops and Skirts.
Indiana Gas & Chemical Corp. (USWA).....	Terre Haute, IN.....	7/25/88	7/11/88	20.831	Foundry Coke.
Inmed Corp. (Company).....	Alpharetta, GA.....	7/25/88	7/14/88	20.832	Disposable Medical Products (Ureteral and Catheters).
Kochy's Inc. (Company).....	Middlefield, OH.....	7/25/88	7/13/88	20.833	Motorcycle Dealership.
Robert Bruce, Inc. (ILGWU).....	Philadelphia, PA.....	7/25/88	7/13/88	20.834	Sweaters and Knit Sport Shirts.
Sears—Repair Parts, Depot (Company).....	Pennsauken, NJ.....	7/25/88	7/13/88	20.835	Distribution Center for Appliance Parts.
Texas Apparel Co. (ACTWU).....	Eagle Pass, TX.....	7/25/88	7/12/88	20.836	Men's and Boy's Jeans.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of Petition	Petition No.	Articles produced
West Co. (The) (IGMPAW)	Millville, NJ	7/25/88	7/15/88	20,837	Rubber Pharmaceutical Products.
W.E. Stephens Mfg Co., Inc. (Workers)	Carthage, TN	7/25/88	7/11/88	20,838	Men's Boy's and Ladies Sportswear.
Wonderkni/Score Board (Workers)	Galax, VA	7/25/88	7/12/88	20,839	Boy's and Men's Knit Shirts.
Westinghouse Elevator Co. (IBEW)	Randolph, NJ	7/25/88	7/14/88	20,840	Elevators.

[FR Doc. 88-18608 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.O. Smith Electrical Products Div. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 29, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 29, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 8th day of August 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

	Petitioner (Union/ workers/firm)	Location	Date received	Petition number	Articles produced
A.O. Smith Electrical Products Div. (IUE)	Union City, IA	8/8/88	7/28/88	20,854	Fractional h.p. motors
Bethlehem Steel Corp. (workers)	Beaumont, TX	8/8/88	7/27/88	20,855	Offshore drilling units
Blue Ridge Shirt Mfg. Co., Inc. (workers)	Fayetteville, TN	8/8/88	7/19/88	20,856	Men's & ladies' shirts and blouses
Gain Electronics (workers)	Somerville, NJ	8/8/88	7/26/88	20,857	Integrated circuits
Juvenile Shoe Corp. of America (ACTWU)	Aurora, MO	8/8/88	7/27/88	20,858	Men's, women's & children's shoes
Majoris Marketing (company)	Secaucus, NJ	8/8/88	7/25/88	20,859	Processed ham
Mammoth Cave Garment Co. (workers)	Cave City, KY	8/8/88	7/26/88	20,860	Denim pants and skirts
Parsons Footwear, Inc. (workers)	Parsons, WV	8/8/88	8/1/88	20,861	Shoes
Phillips Petroleum Co. (workers)	Houston, TX	8/8/88	7/19/88	20,862	Crude oil
Silly Products Co. (workers)	Corona, NY	8/8/88	7/26/88	20,863	Ladies blouses, skirts, & pants
Sebo Knitwear (ILGWU)	New York, NY	8/8/88	7/26/88	20,864	Sweaters
Sumitomo Machinery Corp of America (workers)	Teterboro, NJ	8/8/88	7/26/88	20,865	Speed reducers & gear motors

[FR Doc. 88-18534 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Hallden Machine Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 1, 1988–August 5, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each

of the group eligibility requirements of section 222 of the Act must be met.

- (1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,
- (2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and
- (3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,714; Hallden Machine Co., Thomaston, CT

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,712; Chemseco, Cumberland, MD

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,755; *Franklin Veal, Franklin, NJ*

U.S. imports of table beef and veal are negligible.

TA-W-20,728; *N.L. Acme Tool Oilfield, Inc., Houston, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,723; *Emerson Contract Div., Inc., Mt. Sterling, KY*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,720; *Bill Hill Associates and Bill Hill Oil & Gas, Longview, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,717; *Sprague Meter, Bridgeport, CT*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,719; *Well Improvement Specialists, Inc., Houston, TX*

U.S. imports of oilfield equipment are negligible.

TA-W-20,668; *Cluett Shirmakers, Inc., Andalusia, AL*

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,722; *Eaton Corp., Axle and Brake Div., Gallatin, TX*

A certification was issued covering all workers of the Axle and Brake Division of Eaton Corp., Gallatin, TN separated on or after June 2, 1987.

TA-W-20,741; *Donora Sportswear Co., Inc., Donora, PA*

A certification was issued covering all workers separated on or after June 8, 1987.

I hereby certify that the aforementioned determinations were issued during the period August 1, 1988-August 5, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 9, 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-18535 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-147-C]

Broken Heart Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Broken Heart Coal Company, General Delivery, Van Lear, Kentucky 41265 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15-16073) located in Johnson County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mines electric face equipment.

2. The mine is located in the Haddix Coal Seam, which averages 42 inches in height.

3. Petitioner states that when canopies are lowered on the mine's electric face equipment to a height which allows clearance throughout the mine, the canopies limits the equipment operator's vision.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1988. Copies of the petition are available for inspection at that address.

Date: August 10, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-18528 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-10-M]

Camp Bird Venture; Petition for Modification of Application of Mandatory Safety Standard

Camp Bird Venture, P.O. Box 1790, Ouray, Colorado 81427 has filed a petition to modify the application of 30 CFR 57.19037 (fleet angles) to its Camp Bird Mine (I.D. No. 05-00437) located in Ouray County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that fleet angles on hoists not be greater than one and one-half degrees for smooth drums or two degrees for grooved drums.

2. As an alternate method, petitioner proposes to continue to use hoists with large fleet angles on their Level 9, No. 3 Shaft Hoist Station and on their Level 14, No. 1410 Hoist Station until their exploration plans have been completed.

3. In support of this request, petitioner states that the No. 1410 Hoist which is situated at the bottom of Level 9, No. 3 Shaft has been moved as far away from the Shaft Station as it can be moved without interfering with the track haulageway which is also used for transportation of material and supplies.

4. Petitioner further states that, if their exploration program is successful, the No. 3 Shaft will deepen from Level 9 down to Level 14 about 550 feet which would consist of a new hoist room and a new hoist fleet angle and would eliminate the No. 1410 Shaft.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1988. Copies of the petition are available for inspection at that address.

Date: August 9, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-18529 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-136-C]

Eastern Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Coal Corporation, P.O. Box 219, Stone, Kentucky 41567 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment) to its B-2 Mine (I.D. No. 15-07133), and its A-3 Mine (I.D. No. 15-16388) both located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that padlocks be used to prevent mine scoop battery tightening rings from loosening to the point which would allow the battery plug to become disconnected.

2. As an alternate method, petitioner proposed to install on each scoop, a battery plug locking mechanism which would be affixed by permanent weld to the frame of the scoop. The mechanism would consist of a fabricated metal bracket of 1/4 inch plate steel and a spring tensioned brass plunger with a handle attached to be used in lieu of padlocks. The locking mechanisms would be designed, installed and used to prevent the threaded rings from unintentionally loosening.

3. In support of this request, petitioner states that miners who couple and uncouple battery plugs on these machines would be trained in the proper use of the locking devices, the hazards of breaking battery plug connections under load, and the hazards of breaking battery plug connections in the areas of the mine where electric equipment is required to be permissible.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1988. Copies of the petition are available for inspection at that address.

Dated: August 9, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 88-18530 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-135-C]

Sea "B" Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Sea "B" Mining Company, P.O. Box 26, Jewell Ridge, Virginia 24622 has filed a petition to modify the application of 30 CFR 75.327-1 (velocity of air) to its Seaboard No. 2 Mine (I.D. No. 44-03479) located in Tazewell County, Virginia.

The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the velocity of the air current in the trolley haulage entries be limited to 250 feet a minute.

2. As an alternate method, petitioner proposes to utilize 600 feet per minute in the affected track entries in lieu of 250 feet per minute.

3. In support of this request, petitioner states that—

(a) Due to the extensive area which has been mined adverse roof conditions, roof falls, and other obstructions have occurred in the intake airways beside the track entry. Doors have been installed on both belt entries and track entries in an attempt to reduce air velocity to less than 250 feet per minute. However, these attempts have resulted in a reduction in air velocity to approximately 600 feet per minute; and

(b) To rehabilitate these restricted entries, in order to reduce velocity on the belt and track entries to less than 250 feet per minute, would require removal of the roof falls, which would expose workmen to hazardous roof conditions while performing the necessary work. Limiting the velocity of the air current within the mine to ensure air velocity no greater than 250 feet per minute on the affected track entries could restrict the capability of the mine's ventilation system to dilute and carry away explosive mixtures of methane and harmful concentrations of contaminants from working places and other areas.

4. Petitioner further states that, water sprays would be maintained at belt discharge locations and where necessary to control coal dust which may exist and travel in the affected entries.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1988. Copies of the

petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations
and Variances.

Date: August 9, 1988.

[FR Doc. 88-18531 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-138-C]

W. & P. Coal Co., Inc., Petition for Modification of Application of Mandatory Safety Standard

W. & P. Coal Company, Inc., P.O. Box 2216, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 2 Mine (I.D. No. 15-15587) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mines electric face equipment.

2. The No. 2 Mine is the Hazard No. 4 Coal Seam and ranges from 42 to 50 inches in height with rolls and undulations.

3. Petitioner states that due to an uneven roof and a soft and uneven bottom the use of cabs or canopies on the mines electric face equipment would result in a diminution of safety to the miners affected because the cabs or canopies could strike and dislodge the roof supports thereby creating the danger of a roof fall. The cabs or canopies would also limit the equipment operator's visibility thereby creating a danger to the miners working on the section.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1988. Copies of the petition are available for inspection at that address.

Date: August 9, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations
and Variances.

[FR Doc. 88-18532 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88-80;
Exemption Application No. D-6689 et al.]

Grant of Individual Exemptions; Pension Mortgage Trust Program (the Trust) et al.

AGENCY: Pension and Welfare Benefits
Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in

ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pension Mortgage Trust Program (the Trust); Located in Phoenix, AZ

[Prohibited Transaction Exemption 88-80;
Exemption Application No. D-6689]

Exemption

The restrictions of section 408(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the direct or indirect sale, exchange or transfer of units of beneficial interest (Units) or subsequent redemption of Units pursuant to the Trust, between the administrator (the Administrator) or the trustee (the Trustee) of the Trust and an investing plan (Plan) when such Administrator and/or Trustee are fiduciaries with respect to the Plan assets invested in the Trust provided that:

(a) The Plan pays no more or receives no less for such Unit than the Plan would have paid or received in an arm's-length transaction with an unrelated party;

(b) There is only one class of Unit and the rights and interests evidenced by such Units are not subordinate to any other interest in the Trust;

(c) Such sale, exchange or transfer is expressly authorized in writing by a fiduciary of the Plan independent of the Administrator and the Trustee after full disclosure of the real estate investment and/or specific property which constitutes the security in favor of the Trust;

(d) The Trust is an exempt trust under 501(a) of the Code and only plans qualified under 401(a) of the Code may participate or continue to hold Units; and

(e) The Trust meets the guidelines for a group trust under Internal Revenue Service Revenue Ruling 81-100, 1981-1 C.B. 326.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1988 at 53 FR 23812.

For Further Information Contact:
David Lurie of the Department,

telephone (202) 523-8671. (This is not a toll-free number.)

Central Electric Products Company, Inc., Profit Sharing Plan (the Plan); Located in Smyrna, Georgia

[Prohibited Transaction Exemption 88-81;
Exemption Application No. D-6764]

Exemption

The restrictions of section 408(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale for \$170,000 of a parcel of real property located at 1625 Spring Road, Smyrna, Cobb County, Georgia and the reversionary interest in the improvements thereon by the Plan to Messrs. Joel and Scott Lobel and Messrs. Peter and Phillip Stahlman, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1988 at 53 FR 23814.

For Further Information Contact: Alan Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

New England Life Insurance Company and Copley Advisors, Inc.; Located in Boston, Massachusetts

[Prohibited Transaction Exemption 88-82;
Exemption Application No. D-6982 & D-6983]

Exemption

The restrictions of section 408(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to: (1) The acquisition by Empressa Associates (Empressa), a general partnership, of a parcel of real property (the Land) from the Rancho Santa Margarita Joint Venture, an entity in which the New England Life Insurance Company (NEL) has an interest, and (2) the subsequent acquisition by Copley Investors Limited Partnership (Copley Investors), a limited partnership established by NEL and managed by Copley Advisors, Inc., a subsidiary of NEL, of a sixty percent (60%) partnership interest in Empressa; provided that such 60% interest in

Empressa does not exceed 60% of the actual costs and expenses necessarily incurred by Empressa in constructing improvements on the Land, as of the date of Copley Investors' investment in Empressa; plus 60% of the lesser of (a) the actual cost of the Land to Empressa; or (b) the fair market value of the Land on the date Copley Investors invests in Empressa, as determined by an updated appraisal by an independent qualified appraiser; and provided further that Copley Investors will not pay any share of the equity placement fee or of the fees and costs associated with the closing of the acquisition of the Land by Empressa.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1988 at 53 FR 23815.

Effective Date: The effective date of this exemption is February 4, 1987.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (the Trust); Located in New York, New York

[Prohibited Transaction Exemption 88-83; Exemption Application No. D-7155]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) Certain leases (the Leases) by the Trust of space in two commercial real properties (the Properties) located in Hampton, Virginia (Executive Towers) and Portland, Oregon (Parkside) to the Equitable Life Assurance Society of the United States (Equitable), Manufacturers Hanover Consumer Services (MHCS), Security Pacific Corporation (SPC), Read Commercial Properties, Inc. (Read), Prudential-Bache Securities, Inc. (Prudential-Bache) and General Electric Company (GE), each of which is a party in interest or an affiliate of a party in interest with respect to the Trust; (2) the potential amendments, renewals or extensions of the Leases; and (3) the proposed leasing by the Trust of space in the Properties to any other persons or entities that may be parties in interest with respect to the Trust (except for fiduciaries with respect to the Properties including the American Telephone and Telegraph Company and its affiliates and Eastdil Advisers, Inc. and its affiliates) including the amendments, renewals and extensions thereof; provided that the terms and conditions of any leases subject to this

exemption, including any amendments, renewals or extensions thereof, are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties; and provided further that any such leases, including any amendments, renewals or extensions thereof, are approved on behalf of the Trust by Eastdil Advisers, Inc.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Tuesday, June 7, 1988 at 53 FR 20914.

Effective Date: The effective date of the exemption is May 1, 1984 as to the Executive Towers lease to Equitable; December 5, 1986 as to the Parkside lease to Equitable; May 1, 1984 as to the lease to MHCS; February 29, 1984 as to the lease to SPC; April 1, 1987 as to the lease to Read; June 22, 1983 as to the lease to Prudential-Bache, and December 20, 1982 as to the leases to GE.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Central Ohio Building and Construction Industry Investment Plan (the Program); Located in Columbus, OH

[Prohibited Transaction Exemption 88-84; Exemption Application No. D-7435]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed participation by pension plans (the Plans) in construction loans through the Program where such loans are already committed to parties in interest with respect to such Plans by certain lending institutions, provided that the terms of the loans are not less favorable to the Plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as described in the notice of proposed exemption are complied with during the operation of the Program.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 6, 1988 at 53 FR 11357.

Written Comments: The Department received five written comments regarding the notice of proposed exemption. In one of the comments, the commentator expressed approval of the proposed exemption. In three of the

comments, the commentators expressed a general concern about the proposed transactions. The fifth commentator indicated that he had not received timely notification of the proposed exemption. As a result, the Department decided to extend the comment period to July 30, 1988. The applicants' representative also renotified all interested persons. Following discussions of the comments with the Department, the commentators who had concerns about the proposed exemption, withdrew their comments.

Accordingly, the Department has considered the entire record, including the written comments submitted, and has determined to grant the exemption as it has been proposed.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Meridian Bancorp, Inc. Savings Plan (the Plan); Located in Reading, Pennsylvania

[Prohibited Transaction Exemption 88-85; Exemption Application No. D-7440]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash on March 31, 1987 by the Plan to Meridian Bancorp, Inc., a party in interest with respect to the Plan, of a unit of limited partnership interest in Plantation Place Mortgage Company, Ltd. and a unit of limited partnership interest in Winston Apartments Mortgage Company for a price consisting of the face value of such units plus quarterly distributions accrued thereon from July 1, 1986 through March 31, 1987, provided said price was not less than the fair market value of such units at the date of this sale.

Effective Date: This exemption is effective March 31, 1987.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988 at 53 FR 21940.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Bethel Clinic Employees' Profit Sharing Plan and Trust (the Plan); Located in Wichita, Kansas

[Prohibited Transaction Exemption 88-86; Exemption Application No. D-7516]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of certain real property (the Property) to the Bethel Clinic Building Company, L.P., a Kansas limited partnership and a party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the greater of either the sum of \$450,000 or the fair market value of the Property on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988, at 53 FR 21942.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and

representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of August, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-18527 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Requests for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before October 3, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order

to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1-AFU-88-44). Child and spouse abuse treatment records.

2. Department of the Army (N1-AU-87-15). Ammunition and explosives malfunction reports.

3. Department of the Army, U.S. Army Intelligence and Security Command (N1-AU-88-6). Working files of imagery and analysis reports processed in accordance with inter-agency agreements (record copy maintained elsewhere).

4. Defense Intelligence Agency (N1-373-88-10). Routine and facilitative records of the Defense Intelligence College. (Records documenting major policy and operations decisions of the College will be retained permanently.)

5. U.S. Coast Guard, Command, Control and Communications (N1-26-88-2). Family advocacy records which cover child and spouse abuse case files.

6. Department of Commerce, Bureau of the Census (N1-29-87-5). Machine-readable data files for the English Language Proficiency Study, 1982.

7. Commodity Futures Trading Commission, Division of Trading and Markets (N1-180-88-3). Financial audit and review records.

8. Department of Education, Office of Management (N1-12-88-3). Training films made for the Office of Education, 1944-45.

9. Federal Energy Regulatory Commission, Office of Pipeline Producer Regulation (N1-138-88-3). Report of Producer Expenditures, Exploration and Development Activity, Production, Reserve Additions and Revenues (Form 64).

10. Fish and Wildlife Service, Boston Regional Office (N1-22-88-1). Operational records associated with wildlife refuges and Civilian Conservation Corps camps.

11. Department of Justice, Federal Bureau of Prisons (N1-129-88-1). Case files on adjudicated claims.

12. Department of Justice, Federal Bureau of Prisons (N1-129-88-2). Litigation case files.

13. Department of Justice, Civil Division, Foreign Litigation Section (N1-131-88-3). Vested asset liquidation records, closed claim files, closed litigation files, administrative records, created by the Office of the Alien Property Custodian during World War II.

14. Department of Labor, Bureau of Labor Statistics, (N1-257-87-1). Comprehensive schedule for the records of the Consumer Expenditure Survey Program and the Consumer Price and Price Index Program.

15. National Security Agency (N1-457-88-6, N1-457-88-7, and N1-457-88-8). These NSA schedules are classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and Pub. L. 86-36.

16. Office of Personnel Management (N1-146-88-2). Microfilmed veterans preference and change in status files created by the U.S. Civil Service Commission, 1887-1956.

17. Railroad Retirement Board (N1-184-88-1). Part one of agency's comprehensive schedule covering routine administrative and program records.

18. Small Business Administration, Office of Administrative Services, (N1-309-88-1). Case files on administrative proceedings maintained by the Office of General Counsel.

19. Tennessee Valley Authority, Division of Purchasing (NC1-142-85-15). Comprehensive records schedule.

20. United States Information Agency, Bureau of Programs, Policy Guidance Staff (N1-306-88-10). Facilitative files

(records documenting overall policies and programs are permanent).

Dated: August 10, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-18642 Filed 8-16-88; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on these information collections must be submitted by September 16, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202 682-5401).

FOR FURTHER INFORMATION CONTACT: Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202 682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the following new collections of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Status of Dance in Elementary and Secondary Education: Dance Instructors Questionnaire
Frequency of Collection: One-time

Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions

Use: This survey is designed to gather baseline data on the condition of dance in public and private elementary, middle, and secondary American schools. Data of particular interest to this study are the performance standards of dance, curriculum content, budgets, and instructional practices.

Estimated Number of Respondents: 180

Average Burden Hours per Response:

.5+

Total Estimated Burden: 97

Title: Status of Theater in Elementary and Secondary Education: Theater Questionnaire

Frequency of Collection: One-time

Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions

Use: This survey is designed to gather baseline data on the condition of theater in public and private elementary, middle, and secondary American schools. Data of particular interest to this study are the performance standards of theater, curriculum content, budgets, and instructional practices.

Estimated Number of Respondents: 375

Average Burden Hours per Response:

.5+

Total Estimated Burden: 205

Title: Status of Visual Arts in Elementary and Secondary Education: (a) Elementary Principal Questionnaire; (b) Art Teacher Questionnaire

Frequency of Collection: One-time

Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions

Use: This survey is designed to gather baseline data on the condition of art in public and private elementary, middle, and secondary American schools. Data of particular interest to this study are the performance standards of art, curriculum content, budgets, and instructional practices.

Estimated Number of Respondents: (a)

632 (b) 463

Average Burden Hours per Response:

(a) .5+ (b) .33+

Total Estimated Burden: 526 (a+b)

Vera K. Yancey,

Assistant Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-18580 Filed 8-16-88; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

(OMB Number 3145-0058)

Division of Instrumentation and Resources Postdoctoral Fellowships and Professional Development Awards in Studies in Science, Technology & Society Deadline: November 15**Objectives and Scope**

The Program for Studies in Science, Technology, & Society is pleased to announce new guidelines for a program of postdoctoral fellowships and professional development awards. These awards will be made to scholars who wish to improve and expand their skills in historical, philosophical, ethical, normative, or social science studies of science, engineering and technology.

The program's major purpose is to link opportunities for original research to further training and study experiences. Two kinds of awards will be made: postdoctoral fellowships and professional development awards. The postdoctoral fellowships are intended for recent Ph.D.'s in an area of science, technology and society studies (for instance, history and philosophy, ethics, sociology, psychology, or anthropology of science or technology). The professional development awards are intended to support established scholars from the field of science, technology and society studies to improve their understanding of science and technology or to support experienced scientists and engineers wishing to develop or improve science or technology studies skills. These awards should: (1) Allow recipients to undertake original independent research and special studies while working with a senior sponsoring scholar or scholars; and, (2) depending on the recipients' background, enhance methodological and technical skills in science, technology and society studies or in areas of natural or physical sciences, mathematics or engineering.

Eligibility

The research proposed for the awards may be in any field germane to Studies in Science, Technology and Society areas of support. Projects in twentieth century science and technology, including science and technology policy, are especially encouraged. Specifically ineligible are studies in medicine and society which have a public health or clinical orientation.

To be eligible for fellowships or professional development awards in Science, Technology and Society Studies, applicants must be nationals of the United States, that is, citizens of the

United States or native residents of a possession of the United States. Citizens of other countries who have applied for United States citizenship or who have permanent residency status are not eligible.

Applicants for postdoctoral fellowships must have been awarded their first doctoral degree within five years of the deadline for application or realistically expect to earn this degree by no later than one year after the deadline. Postdoctoral fellows must have earned the Ph.D. degree before tenure may begin. Persons with predoctoral degrees in many of these fields may be eligible for doctoral dissertation support through the Foundation's doctoral dissertation research support programs (NSF 88-35).

Normally applicants for professional development awards must have at least five years of advanced teaching and/or research experience in some field of science or engineering, history, philosophy, ethics, or the social study of science, engineering or technology. Scholars without Ph.D.'s who wish to be considered for professional development awards must demonstrate to the satisfaction of an external review panel that their training, professional status, and experience are equivalent to the requirement for the Ph.D., and that their credentials include at least five years of postdoctoral-level research experience and a record of publications or comparable professional accomplishment.

Project Sites

During the tenure of their awards, recipients must work in established and fiscally responsible nonprofit host institutions (U.S. or foreign). The institutions should clearly offer the opportunity to enhance the training and methodological sophistication of the award recipients or offer exceptional tutorial or collaborative relationships consistent with enhancement of research quality. Accessibility to laboratory and other research sites, or to relevant archival materials should also be taken into consideration in selecting institutional affiliations.

All arrangements for affiliations with senior scholars and institutions are the responsibility of the applicants. Applications must include letters from the host institutions, signed by authorized officials, affirming that the applicants will be welcome and will be provided with adequate space and basic services. They must provide statements from the senior scholars with whom the applicants plan to work, indicating a commitment to consultation and assistance in the applicants' research

and learning programs during the requested tenure periods. Applicants who need assistance in identifying suitable hosts are encouraged to contact the NSF Studies in Science, Technology and Society Program to discuss the possibilities. For information, write or call 202-357-9894.

Preference will be given to applicants who move to new institutions and research environments with which they have not been affiliated at the graduate or postgraduate level, or with which they will have been affiliated for no more than three months prior to the start of fellowship tenure. Applicants who wish to affiliate with institutions with which they have had prior associations should have special justifications for these arrangements in their proposals.

Preference among professional development applicants will be given those who affiliate with host scholars from disciplines different from the category in which they have their degree or equivalent. Thus, a natural scientist who affiliates with a philosopher would be preferred to one who affiliates with another natural scientist. Similarly, an historian who affiliates with an engineer would be preferred to one who affiliates with another historian. Under exceptional circumstances, with NSF concurrence, research sites or host institutions may be changed.

Tenure, Stipends, and Allowances

Postdoctoral fellowships are generally awarded for one year of full-time research though the funds may be used over a two year period. The fellowships provide stipends of \$24,000, payable at the rate of \$2,000 per month; special allowances of \$2,000 expendable for supplies, special travel, publication expenses, and other research related costs; and separate institutional allowances of \$2,000 (for domestic host institutions only). Institutional allowances will be paid directly to U.S. host institutions to partially defray administrative costs incurred in conjunction with the fellowships. No allowances for dependents are available.

Professional development awards may be used to support full or half-time activities for up to two years. Plans for less than half-time or for intermittent tenures should provide special justification. Total stipends will not exceed \$36,000. Applicants are encouraged to supplement this support from sabbatical pay and other sources. Special allowances of \$2,000 are available for supplies, special travel, publication expenses and other research related costs. Institutional allowances of

\$2,000 (for domestic host institutions only) will be paid directly to U.S. host institutions to defray costs incurred in conjunction with the awards. Up to \$3,000 will be available for moving expenses if necessary.

Evaluation and Selection of Awardees

Evaluation criteria include: the significance and intrinsic merit of the research and training/studies programs that are proposed; the degree of enhancement of methodological skills and/or knowledge of science and technology; the perceived research competence and potential of the applicants; and the suitability and availability of the sponsoring senior scholars at the host institutions. The nature and degree of cross-disciplinary interchange and interaction will be given significant weight, especially for the professional development awards. Judicious selection of a research problem, logical organization of the learning program, clarity in project design and description, and lucid writing will weigh heavily in the evaluation process. Additional factors include: evidence of past research accomplishments (especially those documented through papers published in high-quality, peer-reviewed journals); suitability of the host institutions; likely effect of the proposed project on the future research development of the applicants; and the potential impact of the research on the field as a whole.

Awards will be made by the National Science Foundation on the basis of the recommendations of a panel of experts applying the above criteria, with due consideration to the impact of the awards on studies in science, technology and society. Successful applicants will be notified by letter.

Conditions of Appointment

Unless explained in the proposal and approved by the NSF, the postdoctoral fellows will be expected to devote full time to appropriate research during the tenure of the Fellowship; recipients of the professional development awards will generally be expected to devote at least half-time to appropriate research during the tenure of the award. All recipients of awards are expected to pursue the program for which the award was granted. Major changes in the research plan, in tenure, or institutional affiliation will require prior Foundation approval.

The annualized salaries of the recipients cannot be augmented by receipt of the award. Professional Development Award recipients may use sabbatical leave pay along with this award. Alternatively or additionally,

institutions may supplement stipends for both fellows and professional development award recipients without prior permission from the Foundation, provided that such supplements are in accord with established institutional policies. Supplements may not be conditioned on any requirement for duties in addition to normal activities of the recipients and may involve teaching only to the extent that the recipients conduct or participate in seminars clearly related to their research programs. In the context of these guidelines, funds that the institution has obtained from external (including Federal) sources may be considered institutional funds. When appropriate, NSF project grants may be used for supplementation to recipients of these awards for duties which are related to their award programs.

At the conclusion of the tenure of these awards, a brief final report using NSF Form 98A must be submitted to NSF.

Intellectual Property Rights

The National Science Foundation claims no rights to any inventions or writings that might result from these awards. Recipients should note their obligation to include an acknowledgement of NSF support (citing an award number) and a disclaimer of NSF responsibility for the impact of any inventions or writings that might result from the results of these awards.

Privacy Act Notice

The application forms request certain information pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861 et seq.). The information concerning citizenship, field of study, and prior educational experience is used to determine the eligibility for this competition. Personal data such as social security numbers are used in correlating application information and materials, and for distinguishing applicants with similar names. The remaining information assists reviewing panelists in evaluating qualifications for the awards. The information supplied will be used and disclosed only in connection with the evaluation of projects, selection of award recipients, and the administration of awards. It will be used for statistical reports in a form that will not allow identification of individual applicants. Other than these uses, the information will be held in confidence to the extent permitted by law.

Post-Project Review

Selected award recipients may be invited to participate in a special NSF-

sponsored symposium focused on research performed by them under this program's support. They may be asked either to present their research as papers or to participate as discussants.

Application Procedures and Materials

To be eligible for consideration, an application must be complete. Reproductions of all forms are acceptable. The signed original and all copies should be printed on only one side of the paper.

(1) NSF should be sent ten (10) collated sets of the proposal containing (in the order listed below):

(a) The application cover page [Appendix 1];

(b) A project summary of 200 words or less written to stand alone;

(c) The proposal text containing a training/study and research plan. This section should not exceed eight (8) single-spaced typewritten pages. The text should include a discussion of the objectives, methods and significance of the research during the tenure period, and the studies in the host discipline or related disciplines that will be undertaken over the period of the award.

(d) A personal statement of no more than one single-spaced typewritten page. This statement should describe the applicant's career goals in the research areas of Studies in Science, Technology and Society and the role that the project, sponsoring senior scholar, and host institution will play in enhancing those goals.

(e) The statement, [Appendix III] from the senior scholar at the proposed host institution indicating agreement to work with the applicant if the award is made;

(f) A letter from the host institution, signed by an authorized official, affirming that if the award is made, the applicant will be provided with adequate space and basic services;

(g) Complete, up-to-date *curriculum vitae* for the applicant and the host scholar;

(h) If the applicant has received an NSF award in the past five years, a section entitled "Results from Prior NSF Support" is required, consisting of no more than a single additional page for each prior award. This statement should include the award number, amount and duration of support, title of the project, summary of results, and list of publications acknowledging the NSF award.

(i) A statement of the relationship (if any) of the proposed award to the applicant's dissertation work.

(j) Three letters of recommendation may be attached. New Ph.D's should, in

general, obtain one of these letters from their thesis advisers. A copy of the applicant's training/study and research plan should be provided to these referees.

(2) Attached to the original proposal should be the following in order designated below:

(a) The duly executed Oath or Affirmation [Appendix II];

(b) Clipped on the top of the original proposal only should be Information about Principal Investigators/Project Directors (NSF Form 1225) [Appendix IV].

Timetable

Proposal submission deadline received in NSF by November 15 of each year.

Award announcement during the following March.

Tenure may begin any time after June 1 of the award year and before June 1 of the following year.

Address

Send the original and 8 copies of the application to:

Proposal Processing Unit, Room 223,
National Science Foundation, 1800 G
St. NW., Washington, DC 20550

Send one information copy directly to:
Studies in Science, Technology and
Society Program, Division of
Information and Resources, Room 320,
National Science Foundation,
Washington, DC 20550

The Foundation welcomes proposals on behalf of all qualified scholars, and strongly encourages women, minorities and persons with disabilities to compete fully in the program described in this document. Facilitation Awards for Handicapped Scientists and Engineers (FAH) provide support for special assistance or equipment to enable investigators, students, or staff with disabilities to work on an NSF-supported project. See the FAH announcement, or contact the FAH coordinator (202/357-7456).

In accordance with Federal statutes and regulations and NSF policies, race, color, age, sex, national origin, or disability shall not be used against, deny benefits to or exclude any person from participation in any program or activity receiving financial assistance from the National Science Foundation.

The Foundation provides awards for research in the sciences and engineering. Award recipients are

wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is (202) 357-7492.

(Catalogue of Federal Domestic Assistance: 47.051 Biological, Behavioral and Social Sciences)

Rachelle Hollander,

Ronald J. Overmann,

Program Directors for Studies in Science, Technology and Society.

August 15, 1988.

[FR Doc. 88-18596 Filed 8-16-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-124]

Virginia Polytechnic Institute and State University, the Virginia Polytechnic Institute Argonaut Reactor; Order Terminating Facility Operating License

By application dated July 17, 1986, as supplemented, Virginia Polytechnic Institute and State University (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of its Argonaut Reactor Facility and to terminate Facility Operating License No. R-62. A Notice of "Proposed Issuance of Orders Authorizing Dismantling of Facility and Disposition of Component Parts, and Terminating Facility License", was published in the *Federal Register* on August 26, 1985 (51 FR 30455). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. By Order dated October 29, 1986, the Commission authorized dismantling of the facility and disposal of component parts as proposed in the licensee's dismantling plan.

The reactor was shutdown in July 1983 and all fuel has been removed from the core and shipped to a DOE facility for processing. The reactor facility has been completely dismantled and all requirements, particularly those relevant

to residual radioactivity and the packaging and shipping of fuel and radioactive material, have been met. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated October 29, 1986. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by the Virginia Polytechnic Institute and State University, located in Blacksburg, Virginia, and pursuant to Sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(b), Facility Operating License No. R-62 is terminated as of the date of this Order. In accordance with 10 CFR Part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the *Federal Register* on August 9, 1988 (53 FR 29973).

For further details with respect to this action see: (1) The application for termination of Facility Operating License No. R-62, dated July 17, 1986, as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the Notice of "Proposed Issuance of Orders Authorizing Dismantling of Facility and Disposition of Component Parts, and Terminating Facility License," published in the *Federal Register* on August 26, 1986 (51 FR 30455). Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 11th day of August 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-18611 Filed 8-16-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25991; File No. PHLX 88-25]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Foreign Currency Options Trading Hours

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 8, 1988 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange"), proposes to amend its Exchange Rule 101 to modify the hours business trading may be conducted in foreign currency options. Underlining indicates material proposed to be added; brackets indicate material proposed to be deleted.

Dealings Upon the Exchange Hours of Business

Rule 101. Except as otherwise ordered by the Board of Governors, the Exchange shall be open for the entrance of members upon every business day, at 8:00 a.m. The Exchange shall conform with daylight saving time when effective in the City of Philadelphia.

The Board of Governors shall determine by resolution the hours during which business may be transacted on the Exchange. The Board of Governors has resolved that no option series shall freely trade after 4:10 p.m. except that value Line Index Options and National Over-the-Counter Index Options shall freely trade until 4:15 p.m. each business day. The Board of Governors has resolved that except under unusual conditions as may be determined by the Board (or the Foreign Currency Options Committee or the Exchange official or officials designated by the Board) foreign currency option trading sessions shall be conducted *at such times as the Board of Governors shall specify between 6:00 p.m. Sundays and 3:00 p.m. Fridays. (Between the hours of 6:00 p.m. and 11:00 p.m. Sundays through Thursdays and in the daytime from 8:00*

a.m. to 2:30 p.m. Mondays through Fridays.)

Commentary .01

The Board of Governors has determined that the Foreign Currency Options evening trading segment generally shall correspond to 8:00 a.m. to 12:00 noon Tokyo, Japan time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to provide the Exchange with the flexibility to conform its daytime trading segment hours to coincide with the opening of trading in the European foreign exchange markets. The PHLX believes that, by coordinating daytime trading segment business hours in foreign currency options with the active morning segment hours in the prime European foreign exchange markets, it will better be able to meet the exchange rate risk protection and related hedging needs of European manufacturing, banking and other commercial firms. In this regard the Exchange via its London office surveyed existing and potential new users of the PHLX foreign currency options market to assess potential market penetration. The PHLX, since its initiation of foreign currency options trading in late 1982, has enjoyed a significant amount of order flow from European-based market participants despite trading during their late afternoon and off-business hours. Indeed, the Exchange's survey disclosed that an estimated 82% of European brokers and 84% of European banks queried would utilize PHLX foreign currency options during extended daytime trading hours (i.e., early morning trading hours in Philadelphia if they were available on the PHLX.)

For the most part, the PHLX expects the extension of the opening of the daytime foreign currency options trading segment to be treated as merely an

extension of the existing trading day. Since the initiation of the evening trading segment, each trading day has been deemed to commence at 7:00 p.m. and continue until 2:30 p.m. the following afternoon. The initiation of an expanded daytime trading segment opening would not alter this arrangement. For example, open interest and volume will continue to be calculated at the end of the daytime trading segment reflecting activity for the entire trading day (i.e., the prior evening segment plus the expanded daytime trading segment). Margin requirements will continue to be based upon a net calculation of positions created throughout the entire trading day. The Exchange contemplates the expansions of the daytime trading segment will not necessitate any changes in current procedures respecting options exercises or assignments. The Exchange's real-time trade comparison system will be utilized throughout all trading segments and augmented computer processing for the expanded daytime trading segment transactions will be initiated by the Exchange and the OCC, respectively. In this regard, the Exchange will assign additional market surveillance and operations staff personnel to cover the expanded foreign currency option daytime trading segment. The Exchange does not believe it will be necessary at the initiation of an expanded daytime foreign currency option trading segment to require amendment to existing capital and/or position and exercise limit rules. The Exchange believes that existing firms and the recent admission of additional foreign currency option traders and brokers should provide sufficient market participants and corresponding liquidity during the expanded daytime trading segment hours.

The PHLX also notes that the interbank currency markets effectively operate on a 24 hour basis. Hence, persons that establish currency option positions before normal U.S. business hours are at risk that the underlying currency markets may move against them while the PHLX market has not yet opened. The expansion of the foreign currency option daytime trading segment will provide an opportunity for market participants to better protect themselves against 24 hour currency market fluctuations.

The flexibility built into the proposed rule is necessary because the Exchange has not determined the precise early morning time upon which to commence trading at this time. At this time the Exchange anticipates that the expanded daytime segment will be opened at 4:30

a.m., Philadelphia time. As previously discussed with Commission staff, the Exchange commits to filing a proposed rule change under section 19(b)(3)(A) when it identifies a specific time for the expanded early morning opening. The Exchange also commits that it will not otherwise expand or change currency options trading hours without making similar sub filings pursuant to section 19(b)(3)(A) to implement its broadened authority under this proposed rule change. This specified time will be made part of the proposed rule as commentary .02. The Exchange will provide foreign currency options participants and participant organizations with adequate notice of any such change in trading hours made as a result of implementation of the proposed rule change. The Exchange anticipates making the first such time change to expand the daytime trading segment on or around January 18, 1989.*

The proposed rule change is based on section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHILX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 12, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-18647 Filed 8-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24693]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 11, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by

September 6, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company, et al. (70-7058)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, and Energy Initiatives, Incorporated, 95 Madison Avenue, Morristown, New Jersey 07960 ("EII"), a subsidiary of JCP&L, have filed, pursuant to sections 9(a) and 10 of the Act, a post-effective amendment to their previously filed application-declaration pursuant to sections 6(b), 9(a), 10, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order dated April 16, 1987 (HCR No. 35-24373), EII was authorized, through December 31, 1996, to invest in cogeneration facilities qualifying under the Public Utility Regulatory Policies Act of 1973 located anywhere in the United States, and in other qualifying facilities located within the service territories of the companies that are parties to the Pennsylvania-New Jersey-Maryland Interconnection Agreement ("PJM Companies") and to perform certain services in connection with those facilities and with load management and energy storage system projects.

EII further proposes, through December 31, 1992, to perform feasibility studies, develop, and provide services for a fee in connection with qualifying facilities and load management and energy storage system projects. EII would carry on these activities directly, or indirectly through one or more corporations, partnerships, joint ventures, or other business entities. EII's investments therein, when added to its investments in qualifying facilities and other projects previously authorized, would not exceed the \$7 million limitation imposed in the order cited above.

*Pursuant to a proposed rule change previously submitted to and approved by the Commission (See File No. SR-PHLX-88-18 approved in Securities Exchange Act Release No. 25815, June 20, 1988) the PHILX expects to modify the hours of its evening trading segment from 7:00-11:00 p.m. Philadelphia time to 6:00-10:00 p.m. Philadelphia time on October 30, 1988. This is to conform to morning business hours in Tokyo, when the U.S. changes from daylight savings to Eastern Standard time.

The proposed development services would include entering into power and fuel supply, asset acquisition and other contracts. Any assets so acquired would be incidental to the development services. Other contemplated services would include, but would not be limited to, contract negotiation and administration, filing and prosecution of applications for permits, development of financing programs, and consulting and management services for such qualifying facilities and projects.

EII would not act as an architect-engineer or contractor, nor, except where cogeneration facilities are concerned, would EII invest or have an ownership interest in any operating qualified facilities located outside the service territories of the PJM companies. EII will sell any ownership interest it may have acquired in connection with its development activities prior to the commencement of the construction of those facilities. EII will also, with respect to the activities mentioned above, account for and report to the Commission concerning those activities separately from its other authorized activities.

New Orleans Public Service, Inc. (70-7350)

New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application with this Commission pursuant to sections 6(a)(2) and 7 of the Act.

By order dated May 12, 1987 (HCAR No. 24387), NOPSI was authorized to establish a new Mortgage ("Mortgage") providing for the issuance of Rate Recovery General and Refunding Mortgage Bonds ("G&R Bonds") and to issue and sell to institutional investors, \$75 million of an initial series of G&R Bonds, 10.95% Series due May 1, 1997 ("10.95% Bonds"). The 10.95% Bonds were issued under a First Supplemental Indenture to the Mortgage, which, in relevant part, granted the holders of the 10.95% Bonds ("Bondholders") the right to tender such G&R Bonds to NOPSI for redemption upon the occurrence of certain specified events.

On February 4, 1988, the Council of the City of New Orleans adopted a resolution ("February 4th Resolution") that required NOPSI to write off and not recover from its retail electric customers \$135 million of its Grand Gulf Steam Electric Nuclear Generating Station, Unit No. 1 ("Grand Gulf 1") related costs, which had been deferred for future recovery from customers, in

addition to \$51.2 million of previously incurred Grand Gulf 1 related costs that NOPSI had absorbed as part of the Rate Settlement with the City of New Orleans, which Settlement provided for recovery by NOPSI of its allocated share of costs associated with capacity and energy from Grand Gulf 1. As a result, NOPSI was required by the terms of the G&R Mortgage to cause an independent arbiter to deliver to the Trustee a certificate indicating whether, in the independent arbiter's opinion, the February 4th Resolution has currently materially impaired or prospectively will materially impair NOPSI's ability to perform its obligations in respect of all G&R Bonds outstanding under the G&R Mortgages. On June 24, 1988, the independent arbiter issued a certificate stating that, as to this issue, the opinion was affirmative and, thus, activated the Bondholders rights to tender their G&R Bonds for redemption. In accordance with the terms of the G&R Mortgage, on July 12, 1988, the Trustee notified the Bondholders of their right to tender their G&R Bonds for redemption; that is, that the Bondholders electing to exercise this right were required to tender their G&R Bonds to the Trustee not later than August 11, 1988 and that NOPSI would be required to redeem all outstanding G&R Bonds so tendered on August 26, 1988.

NOPSI states that the February 4th Resolution has had a substantial and adverse effect upon NOPSI's financial condition and cash flow and that, as a result, NOPSI would not have sufficient funds available to it to redeem the G&R Bonds on August 26, 1988. In order to avoid having to redeem the G&R Bonds, NOPSI now seeks authorization to enter into an agreement with the Bondholders, whereby the Bondholders would agree to forbear from tendering their G&R Bonds on August 11, 1988 and NOPSI would agree, subject to regulatory authorization, that, upon written notice from any Bondholder between November 24 and December 13, 1988, NOPSI would purchase the G&R Bonds at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase; provided, however that the Bondholders would not have the right to give such notice, and NOPSI would not be required to purchase any G&R Bonds, if an independent arbiter has delivered a certificate to each Bondholder on or prior to November 23, 1988 stating that the impairment of NOPSI's ability to perform its obligations on the G&R Bonds has ceased because of judicial or regulatory action. In addition, a Bondholder may revoke its notice of tender at any time prior to purchase of its G&R Bonds.

New Orleans Public Service, Inc. (70-7448)

New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application with this Commission pursuant to sections 6(a)(2) and 7 of the Act.

By order dated January 13, 1988 (HCAR No. 24559), NOPSI was authorized to and did issue and sell to institutional investors, \$40 million of NOPSI's Rate Recovery General and Refunding Mortgage Bonds ("G&R Bonds"), 13.20% Series due February 1, 1991 ("13.20% Bonds"), 13.60% Series due February 1, 1993 ("13.60% Bonds"), and 13.90% Series due February 1, 1995 ("13.90% Bonds"), issued under a Second Supplemental Indenture to NOPSI's General and Refunding Mortgage, as amended ("G&R Mortgage"). The G&R Mortgage granted the holders of the 13.20%, 13.60% and 13.90% Bonds (collectively, "Bondholders") the right to tender such G&R Bonds to NOPSI for redemption upon the occurrence of certain specified events.

On February 4, 1988, the Council of the City of New Orleans adopted a resolution ("February 4th Resolution") that required NOPSI to write off and not recover from its retail electric customers \$135 million of its Grand Gulf Steam Electric Nuclear Generating Station, Unit No. 1 ("Grand Gulf 1") related costs, which had been deferred for future recovery from customers, in addition to \$51.2 million of previously incurred Grand Gulf 1 related costs that NOPSI had absorbed as part of the Rate Settlement with the City of New Orleans, which Settlement provided for recovery by NOPSI of its allocated share of costs associated with capacity and energy from Grand Gulf 1. As a result, NOPSI was required by the terms of the G&R Mortgage to cause an independent arbiter to deliver to the Trustee a certificate indicating whether, in the independent arbiter's opinion, the February 4th Resolution has currently materially impaired or prospectively will materially impair NOPSI's ability to perform its obligations in respect of all G&R Bonds outstanding under the G&R Mortgages. On June 24, 1988, the independent arbiter issued a certificate stating that, as to this issue, the opinion was affirmative and, thus, activated the Bondholders rights to tender their G&R Bonds for redemption. In accordance with the terms of the G&R Mortgage, on July 12, 1988, the Trustee notified the

Bondholders of their right to tender their G&R Bonds for redemption; that is, that the Bondholders electing to exercise this right were required to tender their G&R Bonds to the Trustee not later than August 11, 1988 and that NOPSI would be required to redeem all outstanding G&R Bonds so tendered on August 26, 1988.

NOPSI states that the February 4th Resolution has had a substantial and adverse effect upon NOPSI's financial condition and cash flow and that, as a result, NOPSI would not have sufficient funds available to it to redeem the G&R Bonds on August 26, 1988. In order to avoid having to redeem the G&R Bonds, NOPSI now seeks authorization to enter into an agreement with the Bondholders, whereby the Bondholders would agree to forbear from tendering their G&R Bonds on August 11, 1988 and NOPSI would agree, subject to regulatory authorization, that, upon written notice from any Bondholder between November 24 and December 13, 1988, NOPSI would purchase the G&R Bonds at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase; provided, however that the Bondholders would not have the right to give such notice, and NOPSI would not be required to purchase any G&R Bonds, if an independent arbiter has delivered a certificate to each Bondholder on or prior to November 23, 1988 stating that the impairment of NOPSI's ability to perform its obligations on the G&R Bonds has ceased because of judicial or regulatory action. In addition, a Bondholder may revoke its notice of tender at any time prior to purchase of its G&R Bonds.

Ohio Valley Electric Corporation (70-7499)

Ohio Valley Electric Corporation ("Ohio Valley"), U.S. Route 23, Piketon, Ohio 45561, a public utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed an application pursuant to Section 9(c)(3) of the Act.

Ohio Valley is jointly owned by AEP, Columbus Southern Power Company ("Columbus"), an operating subsidiary of AEP, and several nonaffiliate utility companies. Ohio Valley supplies the power requirements of a gaseous diffusion plant located near Portsmouth, Ohio, which is owned by the U.S. Department of Energy. On June 3, 1983, Ohio Valley entered into a contract for services and supplies from Electronic Associates, Inc. ("EAI"), a nonaffiliate corporation and provider of computer systems, for a total amount of \$891,973.36. As a result of financial and other difficulties, EAI subsequently

terminated its contract with Ohio Valley and, on March 10, 1988, Ohio Valley and EAI entered into a Settlement Agreement ("Settlement Agreement") with regard to Ohio Valley's claims against EAI in the amount of \$974,367.50. The Settlement Agreement provided for payment to Ohio Valley of \$124,100 in cash and a warrant to purchase ("EAI Warrant") EAI's common stock ("EAI Common Stock").

Ohio Valley now requests authorization to acquire an EAI Warrant to purchase a total of 21,900 shares of EAI Common Stock at \$6.00 per share, through December 31, 1997. The 21,900 shares of EAI Common Stock represent 7.3% of the 300,000 shares of EAI Common Stock which can be purchased through exercise of all of the EAI warrants issued pursuant to the several Settlement Agreements,¹ or less than one percent (1%) of the total 2,862,640 shares of EAI Common Stock outstanding. Ohio Valley does not currently own any EAI securities and does not have plans to acquire any EAI securities other than by exercise of the EAI Warrants.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-18648 Filed 8-16-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05105-0195]

Banc One Venture Corp.; Filing of Application for Transfer of Control of a Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to the Regulations governing Small Business Investment Companies (SBICs) (13 CFR 107.601 (1988)) for the Transfer of Control of Banc One Venture Corporation (the Licensee) (formerly Marine Venture Capital, Inc.), 111 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act).

The SBIC was licensed on May 2, 1984, with paid-in capital and paid-in surplus of \$6,000,000. The licensee is a subsidiary of the Marine Bank, N.A.;

¹ EAI entered into Settlement Agreements with certain other nonaffiliate utilities that also had claims for computer services and supplies against EAI.

Marine Bank, N.A. being a subsidiary of the Marine Corporation (MC).

An April 1, 1988, MC merged into Banc One Corporation (Banc One) and became Banc One Wisconsin Corporation. Marine Bank, N.A. became Banc One, Milwaukee, N.A.

No changes in the management or operating policies of the Licensee are contemplated.

Banc One also owns an SBIC, Banc One Capital Corporation, in Columbus, Ohio, License Number 05/06-0020.

Matters involved in the SBA's consideration of the application include the general business reputation and character of the proposed transferees and the probability of successful operation of the Licensee under their control and management in accordance with the Act and Regulations.

Notice is further given that any interested person may, not later than September 16, 1988, submit their comments, in writing, on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A similar Notice shall be published by the Licensee in newspapers of general circulation in Columbus, Ohio and Milwaukee, Wisconsin.

(Catalog of Federal Domestic Assistance Program No. 59-011, Small Business Investment Companies).

Dated: August 10, 1988.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 88-18552 Filed 8-16-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1078]

Inter-American Convention on Letters Rogatory Enters Into Force on August 27, 1988

The Inter-American Convention on Letters Rogatory together with its Additional Protocol will enter into force for the United States on August 27, 1988. The United States ratified the Convention and Additional Protocol subject to the following two reservations:

1. Pursuant to Article 2(b) of the Inter-American Convention on Letters Rogatory, letters rogatory that have as their purpose the taking of evidence shall be excluded from the rights, obligations and operation of this Convention between the United States and another State Party.

2. In ratifying the Inter-American Convention on Letters Rogatory, the United

States accepts entry into force and undertakes treaty relations only with respect to States which have ratified or acceded to the Additional Protocol as well as the Inter-American Convention, and not with respect to States which have ratified or acceded to the Inter-American Convention alone.

In depositing its instrument of ratification with the Organization of American States, the United States declared that:

Pursuant to Article 4 of the Convention and Article 2 of the Additional Protocol, the Government of the United States wishes to inform the Secretary General that the Department of Justice is the Central Authority competent to receive and distribute letters rogatory. The mailing address for these purposes is:

Office of International Judicial Assistance,
Civil Division, Department of Justice, Todd
Building, Room 1234, 550 11th Street, NW.,
Washington, DC 20530.

Pursuant to Article 18 of the Convention, the Government of the United States wishes to inform the Secretary General that letters rogatory to be executed in the United States must be translated into the English language.

Pursuant to Article 6 of the Additional Protocol, the Government of the United States declares that the United States reserves the right to charge a total of twenty-five dollars for performance of the services referred to therein. Pursuant to Article 7 of the Additional Protocol, the Government of the United States declares that the aforementioned charge shall be waived on a reciprocal basis for the execution of a letter rogatory emanating from any State Party to both the Convention and Additional Protocol and may be otherwise waived as appropriate.

States Party to both the Convention and Additional Protocol are: Argentina, Ecuador, Guatemala, Mexico, Paraguay, Peru and Uruguay.

The Convention may be found in 14 International Legal Materials 339 (1975). The Additional Protocol may be found in 18 International Legal Materials 1238 (1979).

Forms for submitting letters rogatory will soon be available at U.S. Marshals' offices.

Peter H. Pfund,
Assistant Legal Adviser for Private
International Law.

August 8, 1988.

[FR Doc. 88-18572 Filed 8-16-88; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-066]

Chemical Transportation Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). This committee advises the Chief, Office of Marine Safety, Security and Environmental Protection on regulatory requirements for promoting safety in the transportation of hazardous materials on vessels and the transfer of these materials between vessels and waterfront facilities.

Applications will be considered for eight expiring terms and any other existing vacancies. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in applications from minorities and women.

The Committee usually meets at least once a year in Washington, DC, with subcommittee meetings for specific problems on an as-required basis.

DATE: Requests for applications should be received no later than December 1, 1988.

ADDRESS: Persons interested in applying should write to Commandant (G-MTH-1), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Commander Ronald W. Tanner, at the above mailing address, or telephone (202) 267-1217.

Dated: August 11, 1988.

J.E. Lindak,

Captain, U.S. Coast Guard, Acting Deputy
Chief, Office of Marine Safety, Security and
Environmental Protection.

[FR Doc. 88-18627 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD 88-066]

Meeting of the Chemical Transportation Advisory Committee Subcommittee on Vapor Control

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of meeting of the Chemical Transportation Advisory Committee (CTAC) Subcommittee on Vapor Control. The Subcommittee is considering requirements for tank vessels and waterfront facilities which use vapor control systems. The meeting will be held on Monday, September 12, 1988 and Tuesday, September 13, 1988, in Room 3437A, B, C, and D, Department of Labor, Frances Perkins Building, 200

Constitution Avenue, NW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. and end at 5:00 p.m. on Monday, and begin at 8:00 a.m. and end at 3:00 p.m. on Tuesday. The Waterfront Facilities Working Group, Tankship Working Group, and Tank Barge Working Group will submit recommendations on work items assigned at the last Subcommittee meeting. The results of a hazards analysis and comments from other organizations concerning the Subcommittee's interim standards will also be discussed.

The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Report on hazards analysis.
4. Comments from other organizations.
5. Consideration of the working groups' recommendations.
6. Assignment of Subcommittee work.
7. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander, R.H. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1217.

Dated: August 11, 1988.

J.E. Lindak,

Captain, U.S. Coast Guard, Acting Deputy
Chief, Office of Marine Safety, Security and
Environmental Protection.

[FR Doc. 88-18625 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD 88-067]

Meeting of the Training and Qualification Working Group for the Subcommittee on Vapor Control, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Training and Qualification Working Group for the Subcommittee on Vapor Control of the Chemical Transportation Advisory Committee (CTAC). The Subcommittee is considering requirements for tank vessels and

waterfront facilities which use vapor control systems. The purpose of the working group is to develop recommended standards for the training and qualification of personnel involved in the loading of tank vessels with vapor control systems in use. The meeting will be held on Wednesday, September 14, 1988, in Room 4315, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. At this meeting, the working group will discuss the training guidelines developed at the last meeting, and finalize its recommendations for submission to the Subcommittee.

Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R. H. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-1217.

Dated: August 11, 1988.

J.F. Luidak,

Captain, U.S. Coast Guard, Acting Deputy Chief, Officer of Marine Safety Security and Environmental Protection.

[FR Doc. 88-18626 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Report of the FAA Conference on Aging Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The FAA hosted an international conference on aging airplanes on June 1-3, 1988, in Arlington, Virginia. Approximately 400 representatives of airlines, manufacturers, aviation industry groups, and civil airworthiness authority organizations from more than 12 countries participated in the conference. A compilation of the discussion and commentary heard at the conference is to be made available to the public on August 17, 1988.

FOR FURTHER INFORMATION CONTACT: Jeffrey Gordon, United States Department of Transportation, Transportation Systems Center, DTS-76, Kendall Square, Cambridge,

Massachusetts 02142, telephone (617) 494-2254.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this report by writing to: Technical Reference Center, United States Department of Transportation, Transportation Systems Center, DTS-930, Kendall Square, Cambridge, Massachusetts 02142.

Background

On June 1-3, 1988, the FAA hosted an international conference on aging airplanes used in air carrier and commuter operations. Recent events brought to the forefront an FAA concern that the safety of the aging air transportation fleet and the past decade of operation using supplemental inspection documents should be reevaluated.

The conference was held to exchange views and discuss concepts for the future in areas which will be most productive in assuring the airworthiness of the aging fleet. The conference addressed research and development needs as well as design, maintenance, and inspection. The discussion took place in four panels which addressed the areas of airframe, engine, inspection (including nondestructive testing), and human factors. These four panels deliberated for 2 days and presented a number of recommendations on the final day of the conference.

The report provides a complete overview of the conference proceedings, consolidating all of the presentations given by keynote speakers, a narrative summary of the four panel discussions, and remarks made at the closing session.

Issued in Washington, DC, on July 5, 1988.

John K. McGrath,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service (Office of Airworthiness).

[FR Doc. 88-18551 Filed 8-16-88; 8:45 am]

BILLING CODE 4920-13-M

Radio Technical Commission for Aeronautics; Special Committee 159—Minimum Aviation System Performance Standard for GPS; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the 10th meeting of Radio Technical Commission for Aeronautics (RTCA) Special Committee 159 on Minimum Aviation System Performance Standard for GPS to be held September 8-9, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500,

Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) Approval of minutes of the ninth meeting, (3) Review of DOD/FAA activity on GPS selective availability, (4) Report of the GPS Integrity Channel Working Group, (5) Review of EUROCAE WG-28 activities, (6) Review of proposed final draft of GPS Minimum Aviation System Performance Standard, (7) Other business, (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 4, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-18549 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 10:30 a.m., September 15, 1988, at the Corporation's Administration Building, 180 Andrews Street, Massena, New York. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than September 8, 1988, Paul A. Maroun, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on August 10, 1988.

Paul A. Maroun,
Advisory Board Liaison.

[FR Doc. 88-18573 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 11, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0108.

Form Number: 1096.

Type of Review: Revision.

Title: Annual Summary and Transmittal of U.S. Information Returns.

Description: Form 1096 is used to transmit information returns (Forms 1099, 1098, 5498, and W-2G) to the Service Center. Under Internal Revenue Code section 6041 and related sections, a separate Form 1096 is used for each type of return sent to the Service Center by the payer. It is used by IRS to summarize and categorize the transmittal forms.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 3,694,520.

Estimated Burden Hours Per Response: 35 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,806,257 hours.

OMB Number: 1545-0126.

Form Number: 1120F.

Type of Review: Revision.

Title: U.S. Income Tax Return of a Foreign Corporation.

Description: Form 1120F is used by foreign corporations to report income from the following types of activities: investments, business, and branch profits. The IRS uses Form 1120F to determine if the foreign corporation has correctly reported its income, deduction and tax and if it has paid the correct amount of tax.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 18,000.

Estimated Burden Hours Per

Response: 13 hours and 35 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 250,530 hours.

OMB Number: 1545-0644.

Form Number: 6781.

Type of Review: Extension.

Title: Gains and Losses from section 1256 Contracts and Straddles.

Description: Form 6781 is used by taxpayers in computing their gains and losses from section 1256 Contracts and Straddles and their special tax treatment. The data is used to verify that the tax reported accurately reflects any such gains and losses.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per

Response: 2 hours and 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 301,364 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-18631 Filed 8-16-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 11, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0003.

Form Number: SS-4 and SS-4PR.

Type of Review: Resubmission.

Title: Application for Employer Identification Number.

Description: Taxpayers required to have an employer identification number for use on any return, statement, or other document must prepare and file Form SS-4 or Form SS-4PR (Puerto Rico) to obtain a number. The information is used by IRS and SSA in tax administration and by the Bureau of the Census for business statistics.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 2,798,500.

Estimated Burden Hours Per

Response: 41 minutes.

Frequency of Response: On occasion.

Estimated Average Reporting Burden: 1,929,253.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-18632 Filed 8-16-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 159

Wednesday, August 17, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 22, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18700 Filed 8-15-88; 11:38 am]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, September 7, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of August, 1988.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of notice: August 11, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-18685 Filed 8-15-88; 11:13 am]

BILLING CODE 7550-01-M

Federal Register

Wednesday
August 17, 1988

Part II

Environmental Protection Agency

40 CFR Parts 264 etc.

[OSW-FR-88-011]

Land Disposal Restrictions for First Third
Scheduled Wastes; Final Rule

Environmental Protection Agency**40 CFR Parts 264, 265, 266, 268 and 271****[OSW-FR-88-011; SWH-FRL-3420-4]****Land Disposal Restrictions for First Third Scheduled Wastes****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating regulations implementing the congressionally mandated prohibitions on land disposal of hazardous wastes listed in 40 CFR 268.10. This action is taken in response to amendments to the Resource Conservation and Recovery Act (RCRA), enacted in the Hazardous and Solid Waste Amendments (HSWA) of 1984. Today's notice promulgates specific treatment standards and effective dates for certain so-called "First Third" wastes. In addition, the Agency is promulgating regulations implementing the land disposal restrictions for those First Third wastes for which EPA is not establishing a treatment standard.

Furthermore, today's rule establishes regulations that do not specifically involve First Third wastes (or do not apply exclusively to such wastes). These actions include modifications to the existing requirements for the "no migration" petition process and the rescission of the nationwide capacity variance for hazardous wastes (other than contaminated soils) containing halogenated organic compounds (HOCs) granted by the Agency in the July 8, 1987 rulemaking. The Agency is also amending the treatment standard applicable to certain California list HOC wastes to allow burning in industrial boilers and furnaces, and revising the treatment standard for methylene chloride in spent solvent wastewaters from the pharmaceutical industry. EPA also is amending 40 CFR 266.20 to require that most hazardous wastes used in a manner constituting disposal meet the applicable treatment standards for the prohibited hazardous waste that they contain as a condition of remaining exempt from other RCRA standards. Additionally, today's rule modifies portions of the land disposal restrictions framework.

EFFECTIVE DATE: This final rule is effective August 8, 1988, except for the

modification to 40 CFR 268.5(h)(2), which becomes effective November 8, 1988.

ADDRESS: The official record for this rulemaking is identified as Docket Number F-88-LDR9-FFFFF and is located in the EPA RCRA Docket (located in the sub-basement) 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, except for public holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. The public may make copies of the docket materials at a cost of \$.15 per page.

FOR FURTHER INFORMATION CONTACT:

For general information about this rulemaking contact the RCRA Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For information on specific aspects of this rule contact Stephen Weil, Mitch Kidwell or William Fortune, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770. For specific information on treatment standards/BDAT, contact James Berlow or Larry Rosengrant, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7917. For specific information on capacity determinations/national variances, contact Jo-Ann Bassi, or Linda Malcolm, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7917.

SUPPLEMENTARY INFORMATION:**PREAMBLE OUTLINE****I. Background**

- A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework
 1. Statutory Requirements
 2. Solvents and Dioxins
 3. California List Waste
 4. Scheduled Wastes
 5. Newly Identified and Listed Wastes

B. Summary of the Proposed Rules

1. Proposed Approach
2. Applicability
3. Best Demonstrated Available Technologies (BDAT)
4. Waste Analysis Requirements
5. Nationwide Variances from the Effective Date
6. "Soft Hammer" Requirements

PREAMBLE OUTLINE—Continued

7. "No Migration" Petition Requirements
 8. Comparative Risk Assessment
 9. Modifications to the Framework
- II. Summary of Today's Final Rule**
- A. Applicability
 - B. Waste Analysis Requirements
 - C. Treatment Standards and Effective Dates
 - D. "Soft Hammer" Requirements
 - E. Reinterpretation of RCRA section 3004(h)(4)
 - F. "No Migration" Petition Requirements
 - G. Nonrulemaking Procedures for Site-Specific Variances from the Treatment Standard
- III. Detailed Discussion of Today's Final Rule**
- A. Determination of Treatability Groups and Development of Treatment Standards
 1. Waste Treatability Groups
 2. Identification of BDAT
 3. Compliance with Performance Standards
 4. Applicability of Treatment Standards to Mixtures and Other "Derived-From" Residues
 5. Transfer of Treatment Standards
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 7. Waste-Specific Treatment Standards
 - a. Revision of BDAT Treatment Standard for Methylene Chloride in Wastewaters from the Pharmaceutical Industry
 - b. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.
 - c. K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.
 - d. K015—Still bottoms from the distillation of benzyl chloride.
 - e. K016—Heavy ends or distillation residues from the production of carbon tetrachloride.
 - K018—Heavy ends from the fractionation column in ethyl chloride production.
 - K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.
 - K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride production.
 - K030—Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.

PREAMBLE OUTLINE—Continued

- f. K022—Distillation bottom tars from the production of phenol/acetone from cumene.
- g. K024—Distillation bottom tars from the production of phthalic anhydride from naphthalene.
- h. K037—Wastewater treatment sludges from the production of disulfoton.
- i. K044—Wastewater treatment sludges from the manufacturing and processing of explosives.
K045—Spent carbon from the treatment of wastewater containing explosives.
K047—Pink/red water from TNT operations.
- j. K046—Wastewater treatment sludges from the manufacturing, formulation, and loading of lead based initiating compounds.
- k. K048 Dissolved air flotation (DAF) float from the petroleum refining industry.
K049—Slop oil emulsion solids from the petroleum refining industry.
K050—Heat exchanger bundle cleaning sludge from the petroleum refining industry.
K051—API separator sludge from the petroleum refining industry.
K052—Tank bottoms (leaded) from the petroleum refining industry.
- l. K061—Emission control dust/sludge from the primary production of steel in electric furnaces.
- m. K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).
- n. K069—Emission control dust/sludge from secondary lead smelting.
- o. K071—Brine purification muds from the mercury cell process in chlorine production, where separately pre-purified brine is not used.
- p. K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.
- q. K083—Distillation bottoms from aniline production.
- r. K086—Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from the cleaning of tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.

PREAMBLE OUTLINE—Continued

- s. K087—Decanter tank tar sludge from coking operations.
- t. K099—Untreated wastewater from the production of 2,4-dichlorophenoxyacetic acid (2,4-D).
- u. K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
- v. K103—Process residues from aniline extraction from the production of aniline.
K104—Combined wastewater streams generated from nitrobenzene/aniline production.
- w. K106—Wastewater treatment sludge from the mercury cell process in chlorine production.
- x. K004—Wastewater treatment sludge from the production of zinc yellow pigments.
K008—Oven residue from the production of chrome oxide green pigments.
K021—Aqueous spent antimony catalyst waste from fluoromethanes production.
K025—Distillation bottoms from the production of nitrobenzene by the nitration of benzene.
K036—Still bottoms from toluene reclamation distillation in the production of disulfoton.
K060—Ammonia still lime sludge from coking operations.
K100—Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.
- 8. Appropriate Technologies for Certain First Third Wastes for Which EPA Has Not Promulgated Treatment Standards
- 9. Burning in Industrial Boilers and Industrial Furnaces as BDAT for Certain California List HOCs
- B. Testing and Recordkeeping Requirements
 - 1. Waste Analysis
 - 2. Notification Requirements
 - 3. Recordkeeping Requirements for Generators and Treatment, Storage, and Disposal Facilities
- C. "Soft Hammer" Requirements
 - 1. Applicability
 - 2. Interpretation of Specific Terms

PREAMBLE OUTLINE—Continued

- 3. Certification Requirements
 - a. Certification for Treated "Soft Hammer" Wastes
 - b. Certification by Owners or Operators as Well as Generators
 - c. Certification
- 4. Treatment of "Soft Hammer" Wastes in Surface Impoundments
- 5. Retrofitting Variances
- 6. Storage Prohibition
- D. Disposal of Restricted Wastes Subject to an Extension of the Effective Date
- E. Relationship to California List Prohibitions
 - 1. "Soft Hammer" Wastes
 - 2. Wastes Granted a National Variance
- F. Petitions to Allow Land Disposal of Prohibited Wastes
- G. Approach to Comparative Risk Assessment
- H. Determination of Alternative Capacity and Effective Dates for First Third Wastes, F001-F005 Spent Solvents, California List Halogenated Organic Compounds, and Contaminated Soil and Debris
- I. Recyclable Materials Used in a Manner Constituting Disposal
- J. Reclamation of Indigenous Waste
- K. Nonrulemaking Procedures for Site-Specific Variances from the Treatment Standard
- L. Rationale for Immediate Effective Date
- IV. Modifications to the Land Disposal Restrictions Framework
 - A. General Waste Analysis (§§ 264.13 and 265.13)
 - B. Operating Record (§§ 264.73 and 265.73)
 - C. Recyclable Materials Used in a Manner Constituting Disposal (§ 266.20)
 - D. Purpose, Scope, and Applicability (§ 268.1)
 - E. Treatment in Surface Impoundment Exemption (§ 268.4)
 - F. Case-by-Case Extensions (§ 268.5)
 - G. "No Migration" Petitions (§ 268.6)
 - H. Testing and Recordkeeping (§ 268.7)
 - I. Landfill and Surface Impoundment Restrictions (§ 268.8)
 - J. Identification of Wastes to Be Evaluated By May 8, 1990 (§ 268.12)
 - K. Determination as to the Availability of the Two Year Nationwide Variance for Solvent Wastes Which Contain Less Than 1% Total F001-F005 Solvent Constituents (§ 268.30)
 - L. Waste Specific Prohibitions (§§ 268.30, 268.31, 268.32, and 268.33)
 - M. Treatment Standards (§§ 268.40, 268.41, and 268.43)
 - N. Variance From the Treatment Standard (§ 268.44)

PREAMBLE OUTLINE—Continued

- O. Storage Prohibition (§ 268.50)
- V. State Authority
 - A. Applicability of Rules in Authorized States
 - B. Effect on State Authorizations
 - C. State Implementation
- VI. Effects of the Land Disposal Restrictions Program on Other Environmental Programs
 - A. Discharges Regulated Under the Clean Water Act
 - B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act (MPRSA)
 - C. Air Emissions Regulated Under the Clean Air Act
- VII. Regulatory Analyses
 - A. Regulatory Impact Analysis
 - 1. Purpose
 - 2. Executive Order No. 12291
 - 3. Basic Approach/Regulatory Alternatives
 - 4. Methodology
 - 5. Results
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Review of Supporting Documents
- VIII. Implementation of the Part 268 Land Disposal Restrictions Program
- IX. References
- X. List of Subjects in 40 CFR Parts 264, 265, 266, 268, and 271

I. Background

A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework

1. Statutory Requirements

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, prohibit the land disposal of hazardous wastes. Specifically, the amendments specify dates when particular groups of hazardous wastes are prohibited from land disposal unless "it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA sections 3004 (d)(1), (e)(1), (g)(5), 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule for restricting the disposal by underground injection of solvent- and dioxin-containing hazardous wastes, wastes referred to collectively as California list hazardous wastes (RCRA section 3004(f)(2), 42 U.S.C. 6924(f)(2)), and soil and debris resulting from CERCLA section 104 and 106 response actions and RCRA corrective actions when the soil and debris contains listed spent solvent and dioxin hazardous wastes.

The amendments also require the Agency to set "levels or methods of

treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet treatment standards established by EPA are not prohibited and may be land disposed. (The Agency can also grant a variance from a treatment standard by establishing a new treatability group and corresponding treatment standard for a specific waste following a successful petition demonstration). In addition, a hazardous waste that does not meet the treatment standard may be land disposed provided the "no migration" demonstration specified in sections 3004 (d)(1), (e)(1) and (g)(5) is made.

For the purposes of the restrictions, HSWA defines land disposal "to include, but not be limited to, any placement of * * * hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave" (RCRA section 3004(k), 42 U.S.C. 6924(k)).

Although HSWA defines land disposal to include injection wells, disposal of solvents, dioxins, and California list wastes in injection wells is covered on a separate schedule. The disposal of such wastes in deep wells is subject to the land disposal restrictions by August 8, 1988.

The land disposal restrictions are effective when promulgated unless the Administrator grants a national variance from the statutory date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the statutory deadline for up to one year, renewable once for up to one additional year, when an applicant "demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date" (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted.

The statute also allows treatment of hazardous wastes in surface impoundments that meet certain minimum technological requirements (or certain exceptions thereto). Treatment in surface impoundments is permissible provided the treatment residues that do not meet the treatment standard(s), or applicable statutory prohibition levels where no treatment standards have been established, are "removed for subsequent management within one year of the entry of the waste into the surface impoundment" (RCRA section 3005(j)(11)(B), 42 U.S.C. 6925(j)(11)(B)).

In addition to prohibiting the land disposal of hazardous wastes, Congress also prohibited the storage of any waste which is prohibited from land disposal unless "such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924 (j)).

2. Solvents and Dioxins

Effective November 8, 1986, HSWA prohibited land disposal (except by underground injection into deep wells) of dioxin-containing hazardous wastes numbered F020, F021, F022, and F023¹ and solvent-containing hazardous wastes numbered F001, F002, F003, F004, and F005 listed in 40 CFR 261.31 (RCRA sections 3004 (e)(1), (e)(2), 42 U.S.C. 6924 (e)(1), (e)(2)). Effective August 8, 1988, the disposal of these wastes into deep injection wells is prohibited (RCRA section 3004 (f)(2), (f)(3), 42 U.S.C. 6924 (f)(2), (f)(3)). During the period ending November 8, 1988, this prohibition does not apply to disposal of solvent and dioxin contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action taken under Subtitle C of RCRA (RCRA section 3004(e)(3), 42 U.S.C. 6924 (e)(3)).

On November 7, 1986, EPA promulgated a final rule (51 FR 40572) implementing RCRA section 3004(e). This rule not only established the general framework for the land disposal restrictions program, but also established treatment standards for the F001-F005 solvent wastes and F020-F023 and F026-F028 dioxin-containing wastes. For a more detailed summary of

¹ The final dioxin rulemaking (50 FR 1978, January 14, 1985) contains three waste codes, F026, F027, and F028, not specified in the statute. The additional waste codes are a result of reorganizations and do not represent a substantive departure from the waste codes enumerated in section 3004(e)(1).

the land disposal restrictions framework, including those regulations promulgated in the November 7, 1986 final rule, refer to the April 8, 1988 proposal (53 FR 11742).

3. California List Wastes

Effective July 8, 1987, the statute prohibited further land disposal (except by deep well injection) of the following wastes listed or identified under section 3001 of RCRA.

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) arsenic and/or compounds (as As) 500 mg/l;

(ii) cadmium and/or compounds (as Cd) 100 mg/l;

(iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l;

(iv) lead and/or compounds (as Pb) 500 mg/l;

(v) mercury and/or compounds (as Hg) 20 mg/l;

(vi) nickel and/or compounds (as Ni) 134 mg/l;

(vii) selenium and/or compounds (as Se) 100 mg/l; and

(viii) thallium and/or compounds (as Tl) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg.

(RCRA sections 3004 (d)(1), (d)(2), 42 U.S.C. 6924 (d)(1), (d)(2)). Effective August 8, 1988, the underground injection into deep wells of these wastes is prohibited (RCRA section 3004 (f)(2), (f)(3), 42 U.S.C. 6924 (f)(2), (f)(3)). During the period ending November 8, 1988, there is no prohibition on the land disposal of California list wastes that are contaminated soil or debris resulting from a response action taken under section 104 or 106 of CERCLA or a corrective action taken under Subtitle C of RCRA (RCRA section 3004(e)(3), 42 U.S.C. 6924(e)(3)).

On July 8, 1987, EPA promulgated a final rule (52 FR 25760) implementing RCRA section 3004(d). This rule established treatment standards for California list wastes containing PCBs and certain HOCs, and codified the statutory prohibition on liquid corrosive wastes. The statutory prohibition is in effect for the California list wastes

containing free cyanides, metals, and the California list dilute HOC wastewaters. For a more detailed summary of the land disposal restrictions framework, including the regulations and modifications promulgated in the July 8, 1987 rule, refer to the April 8, 1988 proposal (53 FR 11742).

4. Scheduled Wastes

The amendments required the Agency to prepare a schedule by November 8, 1986 for restricting the land disposal of all hazardous wastes listed or identified as of November 8, 1984 in 40 CFR Part 261, excluding solvent- and dioxin-containing wastes and California list wastes covered under the schedule set by Congress. The schedule, based on a ranking of the listed wastes that considers their intrinsic hazard and their volume, is to ensure that prohibitions and treatment standards are promulgated first for high volume hazardous wastes with high intrinsic hazard before standards are set for low volume wastes with low intrinsic hazard. The statute further requires that these determinations be made by the following deadlines:

(A) At least one-third of all listed hazardous wastes by August 8, 1986.

(B) At least two-thirds of all listed hazardous wastes by June 8, 1989.

(C) All remaining listed hazardous wastes and all hazardous wastes identified as of November 8, 1984, by one or more of the characteristics defined in 40 CFR Part 261 by May 8, 1990.

If EPA fails to set a treatment standard by the statutory deadline for any hazardous waste in the first third or second third of the schedule, the waste may be disposed in a landfill or surface impoundment provided "such facility" is in compliance with the minimum technological requirements specified in RCRA section 3004(o) (RCRA section 3004(g)(6)). [Note.—In today's final rule, EPA is interpreting the term "such facility" in 3004(g)(6) to refer to the individual surface impoundment or landfill unit]. In addition, prior to disposal, the generator must certify to the Administrator that he has investigated the availability of treatment capacity and has determined that disposal in such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. This restriction on the use of landfills and surface impoundments applies until EPA sets a treatment standard for the waste or until May 8, 1990, whichever is sooner. Other forms of land disposal are not similarly restricted and may continue to be used for disposal of

untreated wastes until EPA promulgates a treatment standard or until May 8, 1990, whichever is sooner. If the Agency fails to set a treatment standard for any scheduled hazardous waste by May 8, 1990, the waste is automatically prohibited from all forms of land disposal after that time unless the waste is the subject of a successful "no migration" demonstration (RCRA section 3004(g)(5), 42 U.S.C. 6924(g)(5)). (Also, the May 8, 1990 effective date may be extended under RCRA section 3004(h)(2) for certain Second Third and Third Third wastes, and until August 8, 1990 for certain First Third wastes.) In a May 28, 1986 final rule (51 FR 19300), EPA published the schedule for setting treatment standards for the listed and identified hazardous wastes. All wastes that are identified as hazardous by characteristic are scheduled in the Third Third, as required by RCRA. This schedule is incorporated in 40 CFR 268.10, 268.11, and 268.12.

Today's final rule promulgates the conditions under which wastes included in the first one third of the schedule of restricted hazardous wastes listed in 40 CFR 268.10 (First Third) may continue to be land disposed. This rule finalizes the April 8, 1988 (53 FR 17578) and May 17, 1988 (53 FR 15000) proposed rulemakings.

5. Newly Identified and Listed Wastes

RCRA requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR Part 261 after November 8, 1984 within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for an automatic prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

B. Summary of the Proposed Rules

1. Proposed Approach

In the interest of allowing the regulated community the most time possible for notice and comment on the Agency's approach to implementing RCRA section 3004(g), EPA believed it was prudent to propose today's rule in two separate notices. The first proposal, April 8, 1988 (53 FR 11742), proposed treatment standards and effective dates for 24 listed hazardous wastes. This proposal also presented and solicited comment on the Agency's approach to implementing the "soft hammer" provisions pursuant to RCRA section 3004(g)(6), which are applicable to First Third wastes for which EPA has not set

treatment standards or effective dates. If EPA fails to set treatment standards for any Second Third wastes by June 8, 1989, the "soft hammer" provisions will also be applicable. Amendments to the "no migration" petition process and to certain of the framework regulations, were also proposed in the April 8 notice.

The second proposal, May 17, 1988 (53 FR 17578), proposed treatment standards and effective dates for 17 additional listed hazardous wastes. Also presented in the second proposal were new capacity determinations based on the 1987 National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities. These new capacity determinations revised the effective dates proposed in the April 8, 1988 proposal for several waste codes, and also proposed to rescind certain national variances granted in previous rulemakings (November 7, 1986, 51 FR 40572; July 8, 1987, 52 FR 25760).

Today's rulemaking finalizes both the April 8 and May 17 proposals. The land disposal restrictions effective dates for First Third wastes which are disposed in deep injection wells are not addressed in this final rule, but rather, are being addressed in a separate rulemaking.

2. Applicability

In both the April 8, 1988 and May 17, 1988 proposals, EPA clarified the applicability of treatment standards to wastes derived from the treatment, storage or disposal of listed wastes and to mixtures of prohibited hazardous wastes or nonwaste matrices (such as soil). The Agency emphasized the following two points:

1. All of the residues resulting from treatment of the original listed wastes are likewise considered to be the listed waste by virtue of the derived-from rule contained in 40 CFR 261.3(c)(2). Consequently, all of the residues generated in the course of treatment would be prohibited from land disposal unless they satisfy the applicable treatment standard or meet one of the exceptions to the prohibition.

2. In general, treatment standards contain concentration levels for wastewaters and concentration levels for nonwastewaters (i.e., wastewaters and nonwastewaters are identified as separate treatability groups). These treatment standards apply to residuals resulting from treatment of the original prohibited waste. Thus, all solids resulting from treatment of a prohibited waste would have to meet the treatment standard for nonwastewaters. Likewise, wastewaters resulting from treatment (e.g., scrubber waters from incineration) would have to meet the wastewater treatment standards. EPA wishes to

make clear that this approach is not meant to allow partial treatment only to change the applicable treatment standard.

In addition, the Agency clarified the applicability of the treatment standards to residues resulting from types of management other than treatment. Examples are contaminated soil or leachate derived from managing the waste. In these cases, the mixture is deemed to be the listed waste, either because of the derived-from rule, the mixture rule (40 CFR 261.3(a)(2)(iv)), or because the listed waste is contained in the matrix (see e.g., 40 CFR 261.3(d)(2), 40 CFR 261.33(d), RCRA section 3004(e)(3)). Thus, the prohibition for the particular listed waste applies to this type of waste.

3. Best Demonstrated Available Technologies (BDAT)

In the April 8 and May 17 proposals, the Agency defined the waste treatability groups by waste codes (generally separating the waste codes into "wastewater" and "nonwastewater" treatability groups) and identified the Best Demonstrated Available Technologies (BDAT) for each treatability group. Treatment standards applicable to the specific waste codes (and treatability groups) are based on the treatment performance levels achievable by the corresponding BDAT identified for each treatability group. Although treatment standards are generally expressed as concentration levels that represent the performance of BDAT, EPA wishes to clarify that any technology not otherwise prohibited (i.e., impermissible dilution) may be used to meet the applicable treatment standards. Specifically, compliance with the land disposal restrictions treatment standards is achieved by meeting the numerical performance standards established for each constituent. The specific technology (BDAT) upon which the standards are based does not need to be used (except when technologies are set as the standards, e.g. halogenated organic compounds (HOCs)).

In the April 8, 1988 Federal Register notice (53 FR 11742), incineration was proposed as BDAT for waste codes K015, K016, K018, K019, K020, K024, K030, K037, and K048-K052 (and the proposed treatment standards consequently were based upon the performance of that technology). Chromium reduction, followed by chemical precipitation and vacuum filtration was proposed as BDAT for K062. Solvent extraction followed by incineration of the extract and by steam stripping and activated carbon

adsorption for the wastewater stream was proposed as BDAT for K103 and K104. High temperature metals recovery was proposed as BDAT for K061. For K071, acid leaching and chemical oxidation was proposed as BDAT for nonwastewaters, and sulfide precipitation and filtration was proposed as BDAT for wastewaters. Total recycle was proposed as BDAT for K069 wastes. EPA determined that the wastes K004, K008, K036, K073, and K100 are no longer being generated and disposed, and therefore, did not identify BDAT for these wastes.

In the May 17, 1988 proposal (53 FR 17578), stabilization was proposed as BDAT for waste codes F006 and K046. For waste codes K001 and K086 (solvent washes and sludges subcategory), BDAT was proposed as incineration followed by stabilization of nonwastewater residuals and chromium reduction followed by chemical precipitation for wastewater residuals. The proposed BDAT for nonwastewater forms of K022 was proposed as fuel substitution followed by metals stabilization and metals precipitation of scrubber water. Fuel substitution or incineration was the proposed BDAT for K083. EPA proposed rotary kiln incineration as BDAT for K087 and solicited information to support a conclusion that total recycling could be accomplished for some K087 subcategories. BDAT for K099 was proposed as chemical oxidation with chlorine. Incineration followed by stabilization of ash residues to immobilize the metals was the proposed BDAT for both K101 and K102. BDAT was proposed as thermal recovery for K106 nonwastewaters and sulfide precipitation followed by filtration for K106 wastewaters. The Agency determined that waste codes K021, K025, and K060, were no longer generated, and thus "No Land Disposal" was the proposed BDAT treatment standard. Waste codes K044, K045, and K047 also had "No Land Disposal" as the proposed treatment standard because open burning/open detonation was identified as treatment for these reactive wastes. Because open burning and open detonation are not considered to be land disposal provided that no reactive constituents remain after detonation (see 51 FR 40580), there would be no land disposal of a hazardous waste (see 40 CFR 261.3(a)(2)(iii)).

EPA also proposed to revise the treatment standard for methylene chloride in F001-F005 wastewaters from the pharmaceutical industry to be based on the performance of steam stripping. Furthermore, in the May 17, 1988

proposal, EPA solicited additional comment on an approach that would amend the § 268.42(c)(2) treatment standards to allow burning of California list HOCs in industrial boilers and furnaces (as well as incinerators) in accordance with applicable regulatory requirements.

4. Waste Analysis Requirements

In the April 8, 1988 proposal, EPA presented its approach to waste analysis (see 53 FR 11764). Since treatment standards represent the performance level of BDAT applied to a particular waste, the Agency's approach was to require waste analysis that best measures what the BDAT treatment technology is intended to accomplish (even though use of the identified BDAT is not required). For example, if incineration (a destruction technology) is identified as BDAT, then the treatment standards are expressed as total constituent concentration levels (i.e., waste analysis is a total composition analysis, rather than an extract analysis) to evaluate whether destruction occurs optimally. Similarly, if stabilization (an immobilization technology) is identified as BDAT, then the treatment standards are expressed as constituent concentration levels in a Toxicity Characteristic Leaching Procedure (TCLP) (see 40 CFR Part 268 Appendix I) extract to reflect whether immobilization has been optimized.

The Agency also clarified that in cases where a combination of both a destruction or removal technology and a stabilization or fixation technology is identified as BDAT, then both analyses must be employed to monitor compliance with the treatment standards. In such cases, neither test alone is designed to ensure that the technology-based treatment standards (which would be expressed as both total composition and TCLP extract concentration levels) have been met.

5. Nationwide Variance from the Effective Date

Due to the lack of sufficient alternative protective treatment or recovery capacity to treat certain of the wastes to the applicable treatment standards, a national capacity variance was proposed for several of the waste codes addressed in the April 8 and May 17 proposals. This determination was based on a comparison of the volumes of wastes requiring treatment to the amount of treatment capacity available for such treatment. Although EPA usually does not require that BDAT technologies be used to meet the applicable treatment standards (unless the technology is specified as the

treatment standard for the waste in § 268.42), capacity figures are derived based on technologies identified as BDAT, to ensure that adequate treatment is available to meet the treatment standards.

In the April 8 notice, EPA proposed a two-year national variance from the effective date for K016, K018, K019, K020, K024, K030, K037, K048-K052, K061, K071, K103 and K104. However, the Agency also noted that new capacity determinations would be presented (and thus, these proposed variances would be revisited) in a supplemental proposal (i.e., the May 17 proposal).

In the May 17 notice, EPA proposed a two-year national variance from the effective date for one additional waste code, K106, and for certain contaminated soils (First Third) that require solids incineration capacity. Also, the Agency revised the April 8 proposal, and proposed not to grant a variance for K016, K018, K019, K020, K024, K030, K037, K103, and K104. Therefore, the First Third wastes for which a two-year national variance from the effective date was proposed are K048, K049, K050, K051, K052, K061, K071 and K106. In addition, the May 17 notice proposed a two-year capacity variance for certain contaminated soils that require solids incineration capacity. The variance was proposed for soils contaminated with First Third wastes, and soils from RCRA and CERCLA response actions contaminated with solvents, dioxins and California list wastes.

Additionally, the May 17 proposal revisited certain national variances granted by previous rulemakings (i.e., November 7, 1986, 51 FR 40572; and July 8, 1987, 52 FR 25760). In light of new capacity data indicating that sufficient liquid incineration capacity exists to incinerate or thermally combust certain wastes, EPA proposed to rescind the variances granted for the following wastes:

(a) Spent solvent wastes identified as EPA Hazardous Waste Nos. F001-F005 generated by small quantity generators producing from 100-1,000 kilograms of hazardous waste per month;

(b) Solvent waste generated from section 104 or 106 response actions under CERCLA or any RCRA corrective action, except where the waste is contaminated soil or debris; and

(c) Hazardous wastes containing HOCs in concentrations greater than or equal to 1,000 mg/l, except for California list HOC contaminated soils.

6. "Soft Hammer" Requirements

In the April 8 proposal, the Agency presented its approach to implementing

RCRA section 3004(g)(6), the so-called "soft hammer" provision. This "soft hammer" provision applies to First Third (and Second Third) wastes for which EPA fails to set treatment standards and effective dates by the statutory deadlines (for First Third wastes, this deadline is August 8, 1988), and applies until May 8, 1990 or until EPA promulgates treatment standards, whichever is sooner.

EPA interpreted the statutory provision to apply only to such First Third wastes when they are disposed in landfill and surface impoundment units, and further interpreted the statutory language to require that such disposal units must meet the minimum technological requirements of RCRA section 3004(o) (double liner, leachate collection system, and ground water monitoring, or equivalent performance as provided in RCRA section 3004(o)(2)). The Agency's approach to the "soft hammer" provisions required that the generator (or owner or operator) certify that there is no treatment practically available that meaningfully reduces toxicity or mobility of the waste and that, therefore, disposal of these wastes in a landfill or surface impoundment unit that meets the minimum technological requirements of section 3004(o) is the only practical alternative. This certification would also apply to those "soft hammer" wastes for which treatment was practically available and which have been treated to reduce toxicity or mobility and for which no further treatment is practically available; thus, disposal of the treatment residuals in a landfill or surface impoundment unit that meets the minimum technological requirements is the only alternative.

7. "No Migration" Petition Requirements

The April 8 proposal also included amendments to 40 CFR 268.6, the "no migration" petition process. The Agency did not present its interpretation of the statutory "no migration" language of RCRA section 3004 (d), (e), and (g) for surface disposal units; this interpretation will be presented in a separate rulemaking. The amendments presented in the April 8 notice did, however, propose additional requirements relating to:

(a) Documenting compliance with other applicable laws;

(b) Submitting monitoring plans;

(c) Procedures to be followed if there are changes in operating conditions after an exemption is granted; and

(d) Procedures to follow upon detection of hazardous constituent migration.

8. Comparative Risk Assessment

In both the April 8 and May 17 proposals, EPA presented a change in its approach to using comparative risk assessment as a decision tool in the determination of "available" treatment technologies. In the development of regulations restricting the land disposal of certain spent solvent and dioxin-containing wastes (November 7, 1986 final rule) and California list wastes (July 8, 1987 final rule), comparative risk assessments were conducted to ensure that technologies which presented greater risk than land disposal of untreated wastes were not considered in identifying BDAT. These analyses did not affect the determinations of whether a treatment was considered "available".

Upon further consideration of the existing comparative risk analysis, EPA decided not to utilize this assessment to determine "available" technologies in the First Third proposals. EPA did, however, present the possibility of conducting risk analyses in the future to distinguish between the overall degree of risk posed by alternative treatment technologies and to make determinations concerning the "best" technology based on net risk posed by the alternative technologies.

9. Modifications to the Framework

In both the April 8 and May 17 notices, the Agency proposed several modifications to the existing framework for the land disposal restrictions found in 40 CFR Part 268. EPA's implementation of the "soft hammer" provision, which restricts the disposal in landfills and surface impoundments of First Third wastes for which EPA has not set a treatment standard, was proposed in 40 CFR 268.8. Additional regulatory amendments were proposed to account for the First Third wastes, and especially, "soft hammer" wastes.

EPA also proposed to amend the recordkeeping requirements of § 268.7. The amendments would require storage facilities to be brought into the recordkeeping system, and also require generators to keep copies of the notices, certifications, and waste analyses that are associated with each shipment of restricted wastes. These changes help to ensure that a restricted waste can be tracked from the point of generation to its ultimate destination. Additionally, the Agency proposed to set a five-year limitation on the time period that such records are required to be retained by the generator.

In the April 8 proposal, EPA proposed changes to the regulatory language in § 268.6 concerning "no migration" petitions that reflect the new

requirements presented in the April 8 preamble. In the May 17 proposal, EPA proposed amendments (based on recent capacity data) to certain variances granted in previous rulemakings. The Agency also proposed certain other relatively minor changes to the framework provisions.

II. Summary of Today's Final Rule

A. Applicability

Today the Agency is promulgating treatment standards and effective dates for only certain First Third wastes (i.e., those hazardous wastes listed in 40 CFR 268.10, promulgated in May 28, 1986 (51 FR 19300) pursuant to RCRA section 3004(g)). For those wastes listed in § 268.10 for which EPA does not establish treatment standards or effective dates, the Agency is promulgating regulations to allow for continued land disposal in § 268.8. These so-called "soft hammer" provisions (discussed in detail in section III.C. of today's preamble) apply until May 8, 1990, or until treatment standards or extensions to the effective date are promulgated, whichever is sooner. On May 8, 1990, there is an automatic prohibition on the land disposal of hazardous wastes listed or identified prior to the enactment of HSWA. [Note.—Today's rule does not establish treatment standards for any of the P- or U-list wastes in § 268.10. However, certain of these wastes may be subject to the California list halogenated organic compounds treatment standards, once the standards become effective.]

Also, this rule clarifies the relationship of the California list final rule (July 8, 1987, 52 FR 25760) to First Third wastes (see section III. E.). In addition, this rule clarifies the applicability of Part 268 Subpart D treatment standards to "derived-from" wastes and waste mixtures (see section III. A. 4.).

In addition, the Agency notes that the treatment standards it is promulgating today are not applicable to First Third wastes that are disposed by deep-well injection. (See RCRA section 3004(g)(5) authorizing EPA to prohibit "one or more methods of land disposal" of scheduled hazardous wastes; in this rulemaking, EPA is prohibiting disposal in surface units of most of the wastes in the first third of the schedule; EPA will address disposal by deep-well injection in a later rulemaking.) Wastes that are disposed by deep-well injection are regulated under 40 CFR Part 148, and the applicability of today's 40 CFR Subpart D treatment standards to such wastes will be addressed in a separate

rulemaking. Until that time, First Third wastes disposed by deep-well injection are subject to the "soft hammer" provisions of § 268.8.

B. Waste Analysis and Recordkeeping Requirements

The Agency is today promulgating the approach to waste analysis—what to analyze to evaluate the performance of the treatment technology—was proposed. Basically, where BDAT is a destruction or removal technology, waste analysis that is most appropriate for measuring such destruction or removal is required—i.e., total waste analysis. Similarly, where BDAT is identified as an immobilization technology (e.g., stabilization), waste analysis that most appropriately measures mobilization is required—i.e., analysis of a waste extract. In cases where both technologies are identified as BDAT, both types of waste analyses are required. For a more detailed discussion, see section III. B.

In addition, the Agency is today promulgating a 5-year record retention requirement, as proposed in the May 17, 1988, Federal Register notice. This discussion is also included in section III. B. of today's preamble.

C. Treatment Standards and Effective Dates

Today's final rule establishes treatment standards and effective dates for many First Third wastes. In section III. A., the Agency identifies the waste treatability groups by waste codes and identifies the Best Demonstrated Available Technology (BDAT) for each waste code. Treatment standards applicable to each treatability group are based on the performance levels achievable by the corresponding BDAT identified for each treatability group. The Agency strongly reiterates that any technology not otherwise prohibited (i.e., impermissible dilution) may be used to meet the concentration based treatment standards.

Also, EPA is promulgating amendments to the existing treatment standards for wastewaters containing methylene chloride (as a spent solvent) generated by the pharmaceutical industry, and for California list halogenated organic compounds. See section III. A. for further discussions.

Effective dates are established based on the Agency's determination of whether sufficient protective treatment (or recovery) capacity is available to treat the restricted wastes. Although the regulated community is not required to treat restricted wastes with the technology identified as BDAT (where

treatment standards are expressed as concentration levels), the Agency generally bases its capacity determination on the availability of this technology, thus helping to ensure that adequate treatment capacity is currently available to treat wastes in compliance with the applicable treatment standard. For a detailed discussion of capacity, refer to section III. H.

D. "Soft Hammer" Requirements

Section III. C. of today's preamble discusses the requirements applicable to those First Third wastes for which treatment standards or effective dates have not been promulgated. Basically, the generator must demonstrate and certify that there is no practically available treatment that reduces toxicity or mobility of the waste and that disposal of these wastes in a landfill or surface impoundment unit that meets the minimum technological requirements of RCRA section 3004(o) (double liner, leachate collection system, and ground water monitoring) is the only practical alternative. If treatment is practically available, the generator must certify that his waste is being treated by the best treatment (i.e., the treatment which provides the most environmental benefit) practically available, as indicated in his demonstration. The residuals from treatment of "soft hammer" wastes remain "soft hammer" wastes, and if disposed in a landfill or surface impoundment unit, must be placed in a unit meeting the minimum technological requirements of 3004(o) (including section 3004(o)(2) if an appropriate demonstration can be made).

E. Reinterpretation of RCRA Section 3004(h)(4)

As discussed in section III. D., the Agency is promulgating its reinterpretation of RCRA section 3004(h)(4) as presented in the April 8, 1988, proposal. This interpretation effects the disposal of restricted wastes which have been granted an extension to the effective date (either a national capacity variance or a case-by-case extension) in a landfill or surface impoundment. Under the interpretation promulgated today and effective on November 8, 1988 (during the interim period, the original interpretation applies), if such restricted wastes are disposed in a landfill or surface impoundment unit, the individual landfill or surface impoundment unit must meet the minimum technological requirements of RCRA section 3004(o).

F. "No Migration" Requirements

As discussed in section III. F., the Agency is today promulgating amendments to 40 CFR 268.6, the "no migration" petition process. As proposed on April 8, 1988, these amendments cover the demonstrations required in the petition and certain other requirements on the owner or operator of a waste management unit that is subject to a "no migration" variance.

G. Nonrulemaking Procedures for Site-Specific Variances From the Treatment Standard

The Agency is promulgating amendments to the existing 40 CFR 268.44 to modify the procedures for obtaining site-specific variances from the treatment standard. This action is taken in response to commenters' request for a more streamlined procedural mechanism for obtaining a variance from the treatment standard. EPA believes that, in certain cases, informal rulemaking are neither required nor warranted, and that a more streamlined procedure for obtaining a variance from the treatment standard is justified. This approach is discussed in more detail in section III. K. of today's preamble.

III. Detailed Discussion of Today's Final Rule

A. Determination of Treatability Groups and Development of Treatment Standards

1. Waste Treatability Groups

For the First Third wastes, EPA used the individual listed waste codes as the starting point for developing waste treatability groups. In cases where EPA believed that wastes represented by different codes could be treated to similar concentrations using identical technologies, the Agency combined the codes into one treatability group. EPA based its initial treatability group decisions primarily on whether the waste codes were generated by the same or by similar industries from similar processes. EPA believes that such groupings can be made because of the high likelihood that the waste characteristics which affect treatment performance will be similar for these different waste codes. This conclusion is explained in more detail in the relevant background document for each particular waste code.

The treatment standards in today's rule generally contain concentrations presented constituent by constituent for "wastewaters" and for "nonwastewaters". The treatment standards apply to the wastes as

generated as well as all of the residual wastes generated in treating the original prohibited waste. See RCRA section 3004(m)(2) indicating that treatment standards apply both to wastes and to treatment residuals therefrom. Thus, for example, all K101 and K102 wastes (including the solid residuals generated from treating K101 and K102) would have to meet the treatment standards for nonwastewaters and all wastewaters (including those generated from treating these wastes) would have to meet the treatment standards for wastewaters. For the purpose of defining the applicability of the treatment standard in this rule, the Agency defines wastewaters as wastes that contain less than 1% total organic carbon (TOC) and less than 1% total suspended solids (i.e., total filterable solids) except for those wastes identified as F001, F002, F003, F004, and/or F005 where the Agency indicated a different definition of the solvent wastewater treatability group (see 51 FR 40579 for the definition of a solvent-water mixture). Those wastes that do not meet this definition are considered to be nonwastewaters. A facility is not allowed to dilute or perform partial treatment on a waste in order to switch the applicability of a nonwastewater standard to a wastewater standard or vice versa.

However, EPA wishes to emphasize that where a waste that consists primarily of water (such as a leachate) is classified as a nonwastewater solely by its filterable solids content (i.e., total suspended solids (TSS) levels), the waste can be subjected to dewatering techniques to remove the filterable solids. Treatment standards for nonwastewaters are then applicable to the filtered solids. The filtrate is then subject to the treatment standards for the wastewaters, assuming that the filterable solids content has been reduced to less than one percent by weight. These standards are applicable if the wastes are to be placed in land disposal units, according to the appropriate provisions of today's rule.

2. Identification of BDAT

A detailed discussion of the Agency's general methodology for establishing BDAT standards is provided in 51 FR 40572 (November 7, 1986). Section III. A. of today's preamble discusses the specific application of the methodology to the First Third wastes, and provides a summary of some of the principal elements of the BDAT methodology.

Consistent with the general methodology, EPA first determined which technologies were

"demonstrated" for a particular treatability group. EPA then screened the available treatment data for a particular treatability group with regard to the design and operation of the system, the quality assurance/quality control analyses of the data, and the analytical tests used to assess treatment performance. This screening step is consistent with EPA's promulgated approach in the November 7, 1986, rulemaking for solvent waste codes F001-F005. Also, this screening step recognizes the fact that different performance measures may be appropriate depending on the technology used (e.g., total constituent analysis for destruction of organics by incineration technologies versus TCLP analysis for immobilization of metal constituents by stabilization technologies). EPA was able to emphasize the design and operation of the treatment system for the First Third wastes because its field tests have been modified to gather detailed data to support these analyses.

After the initial screening test, EPA adjusted all treated data values based on the analytical recovery obtained in order to take into account analytical interferences associated with the chemical makeup of the treated sample. For example, a treated residual data point of 0.2 mg/kg with an analytical recovery of 50 percent would be adjusted to 0.4 mg/kg.

After adjusting the data, EPA then averaged the performance levels achieved for the various treatment operations (for which the Agency had complete data) and compared the mean values using the analysis of variance test (ANOVA), as described in the November 7, 1986, preamble (see 51 FR 40591), to determine if one technology performed significantly better. In general, where one technology performed better, it was determined to be "Best". If this technology was also determined to be "Available" (i.e., it is commercially available and provides substantial treatment), then the technology was selected as the Best Demonstrated Available Technology (BDAT). In cases where EPA only has data on one technology, but is aware of other demonstrated technologies, EPA used its engineering judgment to determine that these other technologies would not be expected to significantly improve the level of performance.

3. Compliance with Performance Standards

Treatment standards promulgated in today's rule are performance standards reflecting the performance achieved by "BDAT". As such, compliance with

these standards requires only that the treatment level be achieved prior to land disposal. It does not require the use of any particular treatment technology. While dilution of the waste as a means to comply with the standard is prohibited, wastes that are generated in such a way as to naturally meet the standard can be land disposed without treatment. With the exception of treatment standards that prohibit land disposal, all treatment standards proposed today are expressed as concentration levels either in the waste (§ 268.43) or in an extract of the waste (§ 268.41).

It is important to note that several commenters misinterpreted EPA's position on compliance with the performance standards and the identification of a technology as the basis for BDAT. The specific technologies identified as the basis for BDAT for each waste code are simply those technologies which EPA utilized to develop the waste-specific performance standards. A comparable methodology exists under the Clean Water Act in establishing BPT, BAT, PSES, NSPS, and PSNS effluent limitation guidelines and standards. Any technology or combination of technologies not otherwise prohibited (i.e., impermissible dilution) can be used to achieve these standards. EPA has not, in this First Third final rule, prohibited the use of any other applicable treatment or recycling technology unless that technology is considered to be land disposal.

In today's rulemaking, EPA has used both total constituent concentration and TCLP analyses of the treated waste as measures of technology performance. For all organic and cyanide constituents, EPA is basing the treatment standards on the total constituent concentration found in the treated waste. EPA based its decision on the fact that technologies exist to remove or destroy these constituents. Accordingly, the best measure of performance would be the extent to which the various organic compounds have been removed or destroyed (as measured by the total amount of constituent remaining after treatment). The legislative history emphasizes the desirability of actually destroying organic hazardous constituents [Vol. 130, Cong. Rec. S9179 (daily ed. July 25, 1984)]. [Note.—EPA's land disposal restrictions for solvent waste codes F001-F005 and dioxin waste codes F020-F023, F026-F028 (51 FR 40572) use the TCLP value as a measure of performance. At the time that EPA promulgated the treatment standards for the solvents and dioxins,

useful data were not available on total constituent concentrations in treated residuals and, as a result, the TCLP data were considered to be the best measure of performance.] Where the Agency has based treatment standards on removal/recovery or destruction, whether metals or organics, the treatment standards thus are based on total waste analysis.

In cases where treatment standards for metals are based on stabilization, EPA is using the TCLP as the measure of the treatment technology's performance. The Agency's rationale is that stabilization is meant to chemically and physically minimize the mobility of the metals in the waste and that the TCLP test is specifically designed to measure the mobility of the hazardous constituents. For wastes where treatment standards are based on sequential treatment processes due to the presence of organics and metals, the waste must meet both total constituent concentrations for organics and TCLP concentrations for metals prior to land disposal.

In both the April 8, 1988 and the May 17, 1988 proposed rules for the First Third wastes, the proposed treatment standards were reported with a varying number of significant figures. The final standards in today's rule have been adjusted and rounded off to a maximum of two significant figures (in some cases, a particular standard may have only one significant figure). EPA did not intend that any greater accuracy be achieved other than that which is attainable through the standard analytical methods employed to develop the treatment data.

4. Applicability of Treatment Standards to Mixtures and Other "Derived-From" Residues

In a number of instances in today's rule, BDAT consists of an operation or series of treatment operations which generate additional waste residues. For example, BDAT for wastes K101 and K102 is based on incineration followed by metals (ash) stabilization. Incineration generates two residues requiring treatment, namely the ash residues and the scrubber waters. Treatment of the scrubber waters (to remove metals) may generate further additional inorganic residues which also may require stabilization. Ultimately, these additional wastes may require land disposal and must, therefore, meet the same standards as the stabilized ash residues. With respect to these additional wastes, the Agency wishes to emphasize that all of the residues from treatment of the original listed wastes are considered to be the listed waste by virtue of the derived-from rule contained

in 40 CFR Part 261.3(c)(2). Consequently, all of the wastes generated in the course of treatment would be prohibited from land disposal unless they satisfy the applicable treatment standard or meet one of the exceptions to the prohibition.

The Agency has not performed tests in all cases on every waste that can result from every part of the treatment train. However, the Agency's treatment standards are based on treatment of the most concentrated form of the waste. Consequently, the Agency believes that the less concentrated wastes generated in the course of treatment can be treated to these standards.

Today's treatment standards also apply to waste mixtures; i.e., mixtures of different waste streams. As the Agency has repeatedly stated in previous preambles, the more stringent standard applies in cases where a waste mixture has two or more applicable treatment standards. The Agency believes that such wastes can be treated to meet the treatment standards applicable to the underlying wastes for several reasons. Waste mixtures commonly result in a waste in which individual constituents are less concentrated than in the original wastes. Also, in establishing treatment standards, the Agency allows for a reasonable amount of variability in the generation and treatment of the waste. Finally, while EPA believes that waste mixtures can be treated to meet the treatment standards, the rules do contain a procedure that allows a petitioner to gain a variance from the treatment standard by demonstrating that his waste cannot be treated to the level specified in the rule (see 40 CFR 268.44). To date, the Agency has not received a petition for such a variance, indicating that the treatment standards currently in effect are achievable.

The Agency, however, has determined that one class of waste mixtures—mixed hazardous/radioactive wastes—should not be included in the First Third and is amending § 268.12 (the Third Third) to move such wastes to the final third of the scheduled wastes. Therefore, these wastes will not be prohibited from land disposal until May 8, 1990. The Agency is taking this action based on the relatively small volumes of such wastes being generated; while the individual hazardous wastes may be generated in large volumes, the mixed hazardous/radioactive wastes are not. The Agency notes that this action only affects First Third wastes; spent solvents, dioxins and California list wastes that are mixed with radioactive wastes are subject to the applicable treatment standards when the standards are

effective. [Note.—As discussed in section III. C. 3. a., the Agency believes that the schedule is absolutely committed to its discretion, and that the schedule of prohibited wastes therefore can be amended without notice and comment.]

EPA discussed in detail in the May 17, 1988, preamble the principle that residues from managing listed wastes, or that contain listed wastes, are covered by the prohibition for the listed waste (53 FR 17586). EPA made the following points:

(1) Hazardous waste listings are retroactive, so that once a particular waste is listed, all wastes meeting that description are hazardous wastes no matter when disposed. (As discussed below, this does not mean that such wastes are necessarily subject to Subtitle C regulation, only that they are hazardous wastes.) For example, if on August 9, 1988, EPA were to list distillation bottoms from production of X as a hazardous waste, all such distillation bottoms would be hazardous wastes, regardless of when they are or were generated. They are the thing that is listed.

(2) Residues derived from treating, storing, or disposing of these wastes are therefore also hazardous by virtue of the derived-from rule (§ 261.3(c)(2)), the mixture rule, or in some cases, because the waste itself is still found in the matrix (see § 261.3(d)(2)).

(3) Consequently, for purposes of the land disposal restrictions program, residues from managing First Third wastes, listed California list wastes, and spent solvent and dioxin wastes are all considered to be subject to the prohibitions for the underlying listed hazardous wastes.

Public comment centered on the implications of these principles with respect to management of leachate that derives from management of listed hazardous wastes. The Agency indicated that leachate could be affected by these principles: The derived-from-rule explicitly mentions leachate as a type of derived-from residue that is covered by that rule, and since the statute includes "leaking" within the definition of "disposal", leachate leaking from listed wastes is therefore derived from the disposal of these wastes. As explained more fully below, however, certain of the commenters' concerns regarding leachate (for example, implications for permitting of inactive or subtitle D disposal units) appear to be misplaced.

Commenters also argued that in many cases, leachate could not be treated to the BDAT treatment levels because it is

a different type of waste from the one on which the treatment standards were based. Commenters submitted certain data to support these assertions. Commenters also made the point that since leachate can contain all or most of the listed waste codes, and the Agency has indicated that waste matrices containing a number of prohibited wastes must be treated to meet the most stringent standard for every waste contained in the matrix, it would be hard to design a treatment system for leachate since it would not be clear what the ultimate treatment standard would be until EPA finishes developing treatment standards for all of the listed hazardous wastes. A variation of this comment was that treatment standards for different wastes contributing to leachate could be incompatible, making it impossible to treat all constituents to the applicable treatment standards. Commenters also stated that EPA had not accounted for treatment of leachate in its capacity estimates. A number of commenters made the further point that, especially with respect to subtitle D non-hazardous waste units, EPA's reading tended to penalize persons voluntarily collecting and treating leachate who had kept accurate historic records of what wastes went into the disposal unit. Finally, several commenters suggested that leachate should be viewed as a separate treatability group and that the Agency should develop separate treatment standards for it.

EPA first addresses those comments which disputed the Agency's interpretation of its own rules. The Agency will then address those comments questioning the applicability to leachate and other derived-from wastes of treatment standards based upon treatment of the waste from which the waste is derived.

a. Retroactivity of Waste Listings. A few commenters disputed the Agency's reading that hazardous waste listings are retroactive; that is, all wastes meeting the listing description are hazardous regardless of when they were disposed. EPA believes this point to be nearly self-evident: a waste either does or does not match a listing description. The time at which a waste was disposed does not affect what that waste is. Spent solvent still bottoms disposed of in 1979 (before Agency action listing these wastes as hazardous) are as much spent solvent still bottoms as those disposed in 1981 (after the listing took effect).

In addition, there are a whole series of statutory provisions that give retroactive application to hazardous waste listings. Section 103(c) of CERCLA, enacted in

November 1980 and implemented by rule in April 1981, provides that:

(A)ny person who owns or operates or who at the time of disposal owned or operated * * * a facility at which [hazardous wastes identified or listed under RCRA section 3001] are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under subtitle C of [RCRA], notify the Administrator * * * of the existence of such facility. * * * 42 U.S.C. 9603(c).

This language indicates that wastes that have been disposed in inactive facilities are still RCRA hazardous wastes once they are identified or listed, and that owners and operators of the facilities where the hazardous wastes had been disposed are required to notify the Agency of the wastes' existence. In fact, by the terms of the statute, the provision applies *only* to hazardous wastes at inactive facilities—facilities with the waste which ceased managing the waste before it was identified or listed—because any facility with interim status or a permit is explicitly exempted from the CERCLA notification requirement. EPA's implementation of these rules followed this literal statutory language and thus required all inactive facilities still holding hazardous waste that the Agency had since identified or listed to notify EPA (46 FR 22146, 22149; April 25, 1981). Thus, EPA and Congress indicated that the Agency's listing regulations applied retroactively to hazardous wastes in inactive units, i.e., to units that ceased active management before the effective date of the subtitle C regulations.

EPA, in its May 17, 1988 notice, also cited RCRA sections 3004(d)(3) and (e)(3) as further support for the proposition that hazardous waste listings apply to wastes whose management ceased before the date of the listing. These provisions provide that contaminated soil and debris that contain listed spent solvent or dioxin-containing hazardous wastes (or certain other wastes mentioned in section 3004(d)(2)) generated by a response action under section 104 or 106 of CERCLA, or by corrective action required under RCRA section 3004(u), remain subject (on a slower timetable) to the land disposal restrictions provisions. RCRA section 3020(b) is a similar provision. It provides that groundwater that is contaminated with hazardous waste generated by a CERCLA response or a RCRA corrective action is not subject to an otherwise-applicable prohibition on disposal in certain types of underground injection wells (provided that the contaminated groundwater is managed in accordance with certain specified standards).

Commenters argued that these provisions do not define what is a hazardous waste and therefore do not show that listed wastes are necessarily affected by these provisions. These provisions were added to the statute so as not to impede the pace of certain ongoing cleanup actions (See S. Rep. No. 284, 98th Cong. 2d Sess. 21). Most of the wastes from these cleanup actions were deposited at the sites before 1980. For example, all of the dioxin-containing wastes at the Missouri dioxin sites were deposited before 1980 (well before these wastes were listed in 1985). EPA believes that the obvious reading of these provisions is that Congress considered the wastes being removed from these actions to be listed wastes—the dioxin-containing wastes at the Missouri sites are good examples—and therefore adjusted the land disposal restrictions effective date for these wastes accordingly (or in the case of section 3020(b), accommodated certain types of cleanups involving reinjection of hazardous wastes). The Agency does not believe it makes sense to assume, as the commenters did, that these provisions apply only to the small percentage of CERCLA and corrective action response wastes that exhibit a RCRA characteristic or are listed by name (i.e., "leachate from Missouri dioxin sites"). (One commenter stated mistakenly that EPA actually had listed dioxin-containing soil and debris; the dioxin listings, F020-F023, F026-F028, apply only to process wastes and to ash from incinerating contaminated soil. EPA indicated in the preamble to these listings that contaminated soil and other mixed and derived from residues would be affected by the listings (see 50 FR 1994, Jan. 14, 1985). This is by virtue of the mixture and derived from rules, or because the listed waste would be contained in a matrix like soil.)

EPA believes therefore that the hazardous waste listings can be retroactive. Thus, wastes derived from treating, storing, or disposing of these wastes likewise are hazardous, as are mixtures of these wastes and other solid wastes. For land disposal restrictions purposes, this means that these residues could become subject to the land disposal restrictions for the listed waste from which they derive if they are managed actively after the effective date of the land disposal prohibition for the underlying waste.

b. *Derived-From Wastes Have the Same Waste Code as the Waste From Which They are Derived.* EPA disagrees with those commenters that said that derived-from or mixed wastes do not have the same waste code as the waste from which they are derived, are mixed

with, or that they contain. The derived-from and mixture rules state, in essence, that listed wastes remain hazardous until delisted. What other hazardous wastes could these listed wastes be if not the waste from which they are derived or mixed? (Indeed, how were all of these wastes covered under the land disposal restrictions schedules in §§ 268.10-268.12 if not under the waste codes, since the schedule nowhere lists leachate or other derived-from residuals separately.) (Cf. *O'Leary v. Moyer's Landfill, Inc.*, 523 F. Supp. 642, 656 (E.D. Pa. 1981) ("A hazardous waste does not lose that description because it is mixed with some other waste, or is found in leachate, 40 CFR

261.3(a)[sic](2)(ii) * * *; indeed, leachate from hazardous waste is an important target of RCRA.") The Agency's delisting regulations make this point by requiring petitioners with mixed or derived-from wastes to make the same demonstration that a delisting petitioner would make for the underlying waste (40 CFR 260.22(b)). The delisting petitioner also may prove that the waste as a whole is not hazardous, as can any delisting petitioner with respect to any hazardous waste. Indeed, there have been dozens of delisting petitions filed to delist residues derived from treating or disposing of multiple wastes, and it is clear from these petitions and Agency action that these residues are deemed to be listed wastes covered by the original waste codes (see, e.g. 51 FR 41324; November 14, 1986 (delisting Enviro-rite treatment residues from treating multiple wastes, stating that the delisting is for "treatment residue (EPA hazardous waste numbers F006, F007, F008, F009, F011, F012, F019, K002, K003, K004, K005, K006, K007, K008, and K062)").

EPA also believes that section 3004(e)(3) confirms this position by stating that soils and debris contaminated with the listed solvent and dioxin wastes become subject to the prohibitions for the listed wastes even though they are not the waste itself, but rather a type of residue from management of the waste. In this regard, EPA notes that other land disposal restrictions provisions likewise equate prohibited wastes and residues from their management. Section 3004(m)(2) thus states that when a prohibited waste has been treated to the level or by the method specified by EPA (pursuant to section 3004(m)(1)), then "such waste or residue thereof" is no longer prohibited from land disposal.

One commenter also stated, incorrectly, that the Agency itself does not follow this principle in its own

CERCLA program. In fact, when EPA identifies a waste at a CERCLA response site as deriving from management of a listed waste, the residue is considered to be the listed waste. EPA in fact considered such wastes in its capacity estimates for each of the waste prohibitions adopted or proposed to date, surely an unnecessary action unless such residues are prohibited by virtue of the prohibition for the listed waste (see, e.g. 51 FR 40611; November 7, 1986).

The same commenter asserted erroneously that EPA had stated that solvent mixtures were not covered by the section 3004(e) prohibition on listed solvent wastes. EPA actually stated that certain solvent formulations containing 10 percent or more solvent ingredients which were listed as hazardous for the first time on December 31, 1985, were not covered by the prohibition for F001-F005 wastes (51 FR 40584; November 7, 1986). This statement has nothing to do with mixtures of hazardous waste spent solvents and other solid wastes, which are covered by the section 3004(e)(3) prohibition. (Indeed, when EPA initially proposed the solvent prohibition, many commenters criticized the Agency's capacity estimates for not taking into account mixture and derived-from rule residuals containing these listed wastes, all of which residues were covered by the prohibition and which therefore needed to be assessed (51 FR 40611; Nov. 7, 1986). EPA's final capacity estimates for the solvent prohibition rule therefore included all of these residues.)

c. Consequences of EPA's Interpretation are Exaggerated. Commenters expressed significant concerns that EPA's interpretation would lead to RCRA permitting of all inactive hazardous waste sites that collect leachate. They believed that if leaching is considered to be a form of disposal (which it is, since leaching is occurring, see RCRA section 1004(3)), then units from which leachate is leaking are thereby subtitle C management units subject to all of the RCRA requirements.

This reading is not correct. The permitting requirement under RCRA section 3005(a) applies to new and existing disposal facilities. "Disposal facility" is defined in the rules as "a facility * * * at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure" (see § 260.10). Section 3005(a) prohibits the operation of such facilities without a permit after the effective date of the permitting regulations, November 19, 1980. Thus, only facilities where hazardous waste is

intentionally placed into land or water after November 19, 1980 require a RCRA disposal permit. Collection of hazardous leachate at otherwise inactive units consequently does not activate the unit.

A second concern dealt with subtitle D facilities that generate leachate. Commenters expressed concern that because these landfills all accepted small quantity generator listed hazardous wastes, all leachate from these facilities was thereby hazardous by the derived from rule. EPA, however, does not read the derived from rule as applying to small quantity generator hazardous wastes. Although the rules are not explicit on this point, the Agency views this exemption, like other comparable provisions such as the household waste exclusion, as applying cradle-to-grave so that residues from managing the waste retain the exemption or exclusion. In this regard, the rules are explicit that the mixture rule does not apply to mixtures of small quantity generator wastes and solid wastes (see § 261.5(h)). EPA views the derived from rule as similarly inapplicable.

d. EPA's Reading Creates Negative Environmental Incentives. EPA is sensitive to the comment that its reading penalizes facilities that collect their leachate and have accurate, historic records of what wastes were accepted at the units. However, this assertion is not completely correct. Facilities collecting hazardous leachate can manage the leachate in such a way as not to trigger subtitle C requirements (including the land disposal restrictions) by managing the leachate in tanks at facilities subject to regulation under the Clean Water Act (see § 264.1(g)(6)). Consequently, the reading most directly discourages subsequent management in surface impoundments, a reasonable outcome given the statutory antipathy for these devices (see RCRA section 1002(b)(7)). Indeed, the statute even allows otherwise prohibited hazardous wastes to be managed in particular types of surface impoundments without first meeting pretreatment standards (although unlike treatment tanks, such impoundments are regulated units) (see RCRA section 3005(j)(11)), so what the Agency's interpretation actually discourages is management in surface impoundments that do not satisfy the section 3005(j)(11) standards. In addition, since the derived-from rule merely shifts the burden of proving that a derived from waste is not hazardous, truly non-hazardous leachate derived from listed wastes can be delisted. There have, in fact, been delisting applications filed to delist leachate

derived from listed hazardous wastes that were disposed before 1980.

Finally, EPA does not accept the argument that facilities are better off if they do not collect contaminated leachate, and so will discontinue voluntary collection. Continued release of such leachate exposes the facility to CERCLA liability, common law tort liability, and possibly criminal liability under intentional endangerment statutes. What EPA's reading does is to ensure that once hazardous derived-from residues are collected, their subsequent management will be controlled under the statute designed to control management of hazardous waste. EPA has no other statutory tool for assuring prospectively that proper management will occur. In fact, in the end, what EPA finds most troubling in the commenters' arguments is that hazardous residues from inactive sites could be withdrawn and managed without regard for RCRA requirements. Thus, for example, under the commenters' position, leachate from sites where chlorophenoxy pesticide residues were disposed could be collected and taken to non-subtitle C units (unlined impoundments, for example) because the leachate would not be considered to be a hazardous waste. This is because the waste from which the leachate is derived was disposed before the effective date of the listing, and the leachate does not exhibit any of the hazardous waste characteristics. Indeed, under some of the commenters' arguments, collecting and managing the waste itself at these sites (rather than the leachate derived from the waste's disposal) would not trigger subtitle C requirements. EPA does not find this result to be in accord with statutory policies or the language of the regulations.

e. Whether Leachate Can Meet the Treatment Standards for the Wastes From Which It Is Derived. Commenters also argued that landfill leachate could not typically be treated to meet the treatment standards in the rule. They also maintained that leachate (or at least leachate from commercial waste disposal facilities) should have its own treatability group reflecting its significant difference from the wastes from which it is derived.

EPA stated at proposal that although it is correct that EPA's treatment standards are based on treating single wastes, leachate that is derived from disposal of these wastes could be treated to meet the treatment standards because leachate typically is more dilute than the waste from which it is derived. Thus, for example, if the original

wastewater contains 200 ppm of methylene chloride, while leachate from disposal of the waste contains 5 ppm of methylene chloride, the leachate could be treated to meet a standard based on treating the waste with 200 ppm methylene chloride. EPA also noted that a treatability variance was available to accommodate those situations where leachate could not be treated to meet the treatment standards (53 FR 17586; May 17, 1988).

Commenters assert, however, that commercial leachate is not just from one waste, but from many. Even so, EPA still believes that leachate, even from multiple waste codes, can be treated to meet the underlying wastewater treatment standards because it contains lower concentrations of the constituents of concern than the wastes on which the treatment standards are based. Nor has the Agency seen evidence that leachate typically contains interfering agents, not found in the original wastes, that impede treatment performance. EPA has carefully examined the data submitted during the public comment period, and finds that it essentially confirms the Agency's statements at proposal. That is, the leachate has comparable or lower levels (in some cases, orders of magnitude lower) than the wastes on which treatment standards are based. None of the data suggest that leachate from commercial facilities is somehow so exceptional that it cannot be treated to meet the standards. (Indeed, of these data, many of the samples would meet the treatment standards as generated and so would not require treatment at all.) The Agency expects that where groundwater contaminated with leachate is being treated in pump-and-treat operations, the standards can be met with existing technology. The treatability variance in section 268.44 also is available in those cases where leachate proves to be untreatable to the applicable standard for the prohibited wastes that it contains.

EPA also has carefully considered comments that leachate deriving from multiple waste codes will be subject to conflicting, multiple treatment standards. Examples contained in the public comments were of leachate derived from wastes whose treatment standards were based on both oxidation and reduction technologies. Another example was of leachate derived partially from wastes whose treatment standards require total constituent analysis (because treatment is based on destruction of organics), and partially derived from other wastes whose treatment standards require TCLP analysis (for fixation of inorganics). EPA

does not find these examples persuasive. Waste constituents can be treated sequentially in treatment trains to avoid the types of alleged incompatibilities. For example, if leachate contains both cyanide and hexavalent chromium, cyanide can be oxidized in a tank, and hexavalent chromium can be reduced and precipitated afterwards in a separate tank. Leachate containing both organics and inorganics can be treated in a treatment train with organics being stripped, followed by metals being precipitated. Many of the treatment standards for First Third wastes are in fact based upon treatment trains of these types.

Several commenters complained of the unfairness of planning to meet a "moving target" of treatment standards. That is, they maintained that because leachate contains (or potentially contains) many or even most of the listed waste codes, they will not know until completion of the land disposal restrictions in 1990 what ultimate treatment standards for leachate will be, given that the leachate will have to be treated to meet the most stringent level for the constituents for which there are overlapping treatment standards. EPA believes, however, that ultimate treatment standards for wastewaters will not differ to any great degree. Wastewater treatment technologies are relatively standardized, and achieve performance results that are similar unless the matrices are exceptionally contaminated or contain high concentrations of interfering agents. Based on the data presently available, EPA has not found this to be the case with leachate, even leachate from commercial hazardous waste landfills. Thus, EPA believes that conventional wastewater treatment technologies or treatment trains—for example, some type of stripping technology followed by a type of chemical precipitation—will generally be able to achieve treatment standards for leachate. To the extent this becomes an issue as EPA proposes treatment standards for the remaining hazardous wastes, commenters can present data showing that conventional waste treatment systems for leachate are unable to achieve treatment standards. No such data were presented with regard to leachate containing solvents and First Third prohibited wastes, in the Agency's view. Since these wastes tend to be the most contaminated (see the statutory prioritization of solvents and the Agency's prioritization of First Third wastes based on RCRA section 3004(g)(5)), EPA believes it reasonable

that subsequent treatment standards will be comparable to those already adopted.

Finally, regarding comments on the capacity to treat leachate, most collected leachate is presently treated in a way that does not even implicate RCRA, and so does not create a demand on available capacity. Thus, as noted above, tanks that treat leachate (and any other wastewater) at facilities subject to regulation under the Clean Water Act's NPDES or pretreatment programs are exempt from almost all RCRA regulation. Most leachate is treated in tanks, according to comments and the Agency's own information, and so does not require additional treatment capacity. Commenters noted that some facilities have impoundments that are used to perform polishing type treatment of leachate, but EPA believes, based on the information presented, that leachate can be treated to meet treatment standards before being placed in impoundments so that impounded leachate need not create demands on existing treatment capacity.

5. Transfer of Treatment Standards

In today's rule, some treatment standards are not based on testing of the treatment technology on the specific waste subject to the treatment standard. Instead, the Agency determined that the constituents present in the waste can be treated to the same performance levels as observed in other wastes for which EPA has previously developed treatment data. EPA believes transferring treatment performance from tested to untested wastes is valid technically.

Transfer of treatment standards to wastes from similar processing steps requires little formal analysis because of the likelihood that similar production processes will produce a waste matrix with similar characteristics. However, in the case where the industries are similar, but other aspects of production processes may be dissimilar, EPA more closely examines the waste characteristics prior to concluding that the untested waste constituents can be treated to levels associated with tested wastes.

EPA undertakes a two-step analysis when determining whether wastes generated by different processes can be treated to the same level of performance. First, EPA reviews the available waste characteristic data to identify those parameters which are expected to affect treatment selection. EPA has identified some of the most important constituents and other parameters needed to select the

treatment technology appropriate for a given waste.

Second, when an individual analysis suggests that an untested waste can be treated with the same technology as a waste for which treatment performance data are already available, EPA then analyzes a more detailed list of constituents that represent some of the most important waste characteristics which the Agency believes will affect the performance of the technology. By examining and comparing these characteristics, the Agency determines whether the untested wastes will achieve the same level of treatment as the tested waste. Where the Agency determines that the untested waste can be treated as well as the tested waste, the treatment standards can be transferred. A detailed discussion of this transfer process for each waste and constituent can be found in the BDAT background documents for each waste or waste treatability group.

Several commenters stated that they do not believe that standards for certain constituents could be transferred to certain waste codes. EPA's response to these comments are addressed in the sections of today's preamble that discuss that particular waste code or treatability group.

6. No Land Disposal as the BDAT Treatment Standard

EPA is establishing "no land disposal" as the treatment standard for several of the First Third wastes. This standard is analogous to the zero discharge standard established as Best Available Technology (BAT) under the Clean Water Act's effluent guideline program. It indicates that after examining available data, the Agency has identified that: (1) The waste can be totally recycled without generating a prohibited residue; or (2) the waste is not currently being land disposed; or (3) the waste is no longer being generated.

Several commenters provided information that for certain wastes that one or more of these premises is invalid. In those cases, the Agency will not finalize the treatment standard of "no land disposal", and will not establish a treatment standard for that waste in today's rule. The soft hammer provisions, as discussed elsewhere in this preamble, will therefore apply for those wastes or subcategories of wastes. EPA intends to develop treatment standards for these wastes prior to May 8, 1990.

For those nonwastewaters for which no specific comments were received

refuting the validity of EPA's basis for "no land disposal", EPA has promulgated the standard as final. EPA has not promulgated a "no land disposal" standard as final for any wastewaters. Since First Third wastes have been historically managed in land disposal units, EPA recognizes that the potential exists for the generation of leachate from these land disposal units. Based on waste characterization data submitted by several commenters, leachates appear to meet EPA's definition of wastewaters. Therefore, EPA believes that constituent standards must be established for wastewaters (i.e., leachates) and that a "no land disposal" is not justified based on the premise of "no generation". It is important to point out that this standard is not intended to imply that the waste was so extremely hazardous that it could not be safely land disposed or handled, but rather that alternative forms of management exist for them. The Agency believes that where it has finalized a treatment standard of "no land disposal", there should either be no generation of this type of waste or that such generated wastes can be handled in a manner that will not require land disposal. In cases where a waste is generated and the basis for the "no land disposal" standard was that the waste was not being generated, or where a waste is significantly different than the waste examined by EPA (e.g., a specific spill residue), a person may petition the Agency for a treatment standard applicable to their waste using the provisions of § 268.44. Prior to May 8, 1990, the Agency could also, through a rulemaking, make the "soft hammer" provisions of § 268.8 applicable in these situations.

7. Waste Specific Treatment Standards

This section describes the development of BDAT treatment standards for all of the First Third wastes covered by today's rule.

a. *Revision of BDAT Treatment Standard for Methylene Chloride in Wastewaters from the Pharmaceutical Industry Listed as F001, F002, F003, F004 and/or F005.* Today's rule promulgates the proposed revision to the treatment standard for methylene chloride in F001-F005 wastewaters from the pharmaceutical industry. Where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date provided that rulemaking procedures are followed. RCRA section 3004(m)(1) states

specifically that treatment standards are to be revised as appropriate. EPA believes that revision of this standard at this time is appropriate and timely, since the effective date for compliance will occur on November 8, 1988.

One commenter suggested that the Agency does not have adequate information to justify using treatment data from an agricultural chemical facility in determining the treatability of wastewaters from pharmaceutical facilities. In particular, the commenter believes that concentrations of methylene chloride, dissolved solids, methanol and the presence of other constituents in the wastes from the pharmaceutical industry are significantly different from those in the wastes that were studied by EPA and that these differences would affect the treatment performance for these wastes.

Based on information provided in the background document for the proposed rule, data indicated that the wastewater from the agricultural facility contained methylene chloride concentrations ranging from 2,500 to 7,400 ppm, while the wastewaters from the pharmaceutical plant contained concentrations ranging from 225 to 10,000 ppm. The Agency believes that this difference in methylene chloride concentrations is not significant and would not affect the performance of the treatment system. In addition, the Agency believes that a plant generating wastewaters with higher methylene chloride concentrations could use a steam stripper treatment system of a larger design or one with an increased retention time in order to comply with these standards.

Information provided in the background document for the proposed rule also showed that the concentration of methanol in the pharmaceutical industry wastewaters ranged from 369 to 1,684 ppm while the concentration of methanol in the agricultural wastewaters ranged from 55 to 81 ppm. The Agency recognizes that there is a difference in methanol concentrations; however, it believes that the concentration of methanol would not affect the performance of the treatment system because methanol has a higher boiling point than methylene chloride and it does not form an azeotrope with methylene chloride. In fact, methanol forms a binary azeotrope with water at a specific temperature and pressure.

Commenters also cited the difference in dissolved solids levels between pharmaceutical wastewaters and

agricultural wastewaters. Data show that the concentration of dissolved solids in the pharmaceutical wastewaters ranged from 2,000 to 4,000 ppm, while the agricultural wastewaters ranged from 89,000 to 122,000 ppm. Although, the difference in concentration is significant, the Agency believes that the agricultural wastewaters with higher concentrations of total dissolved solids are more difficult to treat. Thus, EPA concludes that the wastewaters from the pharmaceutical industry would be easier to steam strip due to the relatively lower dissolved solids content and therefore, should be able to meet the treatment standard. Therefore, EPA maintains that it does have adequate information to justify using treatment data from an agricultural chemical facility in determining the treatability of wastewaters from pharmaceutical facilities. Thus, the Agency is promulgating the standard for wastewaters from the pharmaceutical industry based on the transfer of treatment data for wastewaters from the agricultural industry.

This treatment standard was established based on the performance of a steam stripping process. While the standard is based on data obtained from a steam stripping process, other treatment technologies that can achieve this standard are not precluded from use by this rule.

The Agency feels that it is important to reiterate that none of the treatment standards for other hazardous constituents in F001-F005 wastewaters, or any hazardous constituents in F001-F005 nonwastewaters have been revised; these standards remain as promulgated on November 7, 1986 (51 FR 40572). Also, the Agency has not revised the standard for methylene chloride in F001-F005 wastewaters other than those from the pharmaceutical manufacturing industry.

The final revised BDAT treatment standard for methylene chloride in wastewaters identified as F001, F002, F003, F004 and/or F005 from the pharmaceuticals industry is listed in the table following this section. (Note that the treatment standard is reflected in the regulations by amending § 268.41 for wastewaters from the pharmaceutical industry by removing methylene chloride and its corresponding concentration of 12.7 mg/l, and adding the revised treatment standard in § 268.43).

BDAT TREATMENT STANDARDS FOR F001, F002, F003, F004, AND F005 (WASTEWATERS)

[Pharmaceuticals Industry Subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Methylene chloride.	0.44	Not applicable.

b. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Today's rule promulgates treatment standards for five constituents proposed for F006 nonwastewaters. Individual standards based on the analysis of TCLP leachates have been established for cadmium, total chromium, lead, nickel, and silver and are listed in the table at the end of this section.

These treatment standards were established based on the performance of a stabilization process using cement kiln dust as a binding agent. Other stabilization binding agents and other treatment technologies that can achieve these standards are not precluded from use by this rule.

At the time of this rule, the Agency had not completed its evaluation of waste characterization and treatment information for antimony, arsenic, barium, and selenium. The proposed rule contained the notation "reserved" for these constituents, noting that EPA would be setting standards when the evaluation was completed. Several commenters suggested that a treatment standard of "reserved" was confusing to the regulated community and unnecessary. Since individual standards would still have to be proposed and promulgated through the normal rulemaking procedures, no benefit is achieved by the "reserved" notation for these constituents. Therefore, the Agency has dropped it from the final rule for this waste code.

Several commenters argued that EPA should not regulate copper or zinc, as EPA proposed to do, because they are not hazardous constituents specifically listed on Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, in that both zinc cyanide and copper

cyanide are listed on Appendix VIII, and both are or may be components of electroplating wastes. Further, EPA has determined that both zinc and copper are aquatic toxins, and the Agency considered adding them to Appendix VIII for that reason. However, in this rulemaking the Agency is only regulating zinc and copper when they are indicators of performance of treatment of other Appendix VIII hazardous constituents. Further, the Agency believes that these metal constituents are controlled by treatment of the metal constituents that are regulated by today's rule and therefore, is not promulgating standards for copper or zinc as part of the treatment standards for F006 nonwastewaters.

F006 wastewater treatment sludges may contain treatable levels of cyanides. EPA does not consider stabilization—BDAT for the metals in this waste—to be a demonstrated technology for the treatment of cyanide. The Agency is currently investigating the use of technologies such as electrolytic oxidation, alkaline chlorination, wet air oxidation, ozonation, and other chemical oxidation as applicable technologies for F006 wastes that contain treatable quantities of cyanide. EPA will determine which of these technologies should be the basis of the BDAT standard when these data become available later this year. Since EPA has insufficient information to establish either a separate treatability group for F006 nonwastewaters containing treatable levels of cyanide or a treatment standard for the cyanide contained in them, the Agency is identifying the treatment standard as "reserved" until a standard can be proposed later this year. Because the Agency believes that a standard will be proposed within six months, the use of "reserved" is important in assuring that generators focus their attention on the treatment of cyanide as well as the metal constituents regulated in today's rule. It is also important to note that, until a standard for cyanide in F006 nonwastewaters is promulgated, those F006 nonwastewaters containing cyanides may be land disposed, as long as they do not exceed the statutory cyanide concentration prohibited under the statutory "California List" restrictions—namely liquid hazardous wastes containing free cyanides at concentrations of 1000 ppm or greater. [RCRA 3004(d), 42 U.S.C. 6924(d); see also 52 FR 25760, July 8, 1987].

Several commenters argued that dewatering technologies such as vacuum filtration, plate and frame pressure filtration, and centrifugation should be allowed and should be the basis for

BDAT. While these technologies do reduce the water content in the waste and generally reduce the volume of solid residuals that require disposal, the Agency maintains that these technologies are merely simple physical treatment technologies and generally do not provide any significant treatment of the metals or cyanide contained in the sludge. In cases where dewatering alone produces a residual that can meet the treatment standards, the Agency believes that it is the treatment prior to the dewatering step that has provided the most effective treatment of the metal constituents. Dewatering technologies are not precluded from use by this regulation and can be considered applicable technologies when the residuals meet the promulgated treatment standards or when dewatering is incorporated into an additional treatment train that produces a residual that can achieve these levels. Such a treatment train may include treatment technologies such as chromium reduction, cyanide destruction, metals precipitation, settling, filtration (or centrifugation), and solidification.

One commenter identified cases where metal recovery processes have been used for metal-bearing sludges. However, at this time, their applicability to F006 treatment sludges has not been examined in order to develop additional standards. The concentrations and identity of metals in F006 wastes vary depending on the specific metals used in the plating process. EPA has not been able to define any particular subcategories of F006 wastes that would be amenable to a particular recovery process.

Commenters also insisted that because metal recovery processes for electroplating wastewaters exist and are being used, EPA should establish a treatment standard of "no land disposal" for F006 and thereby, force all electroplating wastewaters to recovery. EPA does not believe this alternative to be viable because it is not clear that all electroplating wastewaters are amenable to recovery, and even if they were, the recovery processes themselves generate a sludge which would be F006, and thus require a treatment standard. Thus, the concentrations and identity of metals in these wastewaters can vary depending on the specific metals used in the plating process. In addition, other wastewaters are often generated at electroplating facilities from sump collections of floor rinsings, from accidental spills and from general maintenance. While these wastewaters may be potentially recovered by mixing

with other process waters, there is a strong possibility that they could foul the recovery process due to nonhazardous contaminants from the floor. Recovery processes often include reverse osmosis and cation exchange techniques. These techniques often produce acidic or caustic backwashes which also must be treated. The sludge from these processes would also be classified as F006.

At this time, EPA has not been able to define any particular subcategory of electroplating wastewaters that would be amenable to a particular recovery process. Thus, the Agency believes that it is unlikely that a standard of "no land disposal" would be justified for all F006 wastes. It is important to point out that, where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date provided that rulemaking procedures are followed.

F006 waste is a sludge consisting of precipitated residues generated following treatment of wastewaters from electroplating operations. Several commenters have identified specific sources of wastewater forms of F006 such as those being generated at a CERCLA site, during a corrective action at a RCRA facility, and as a leachate from a landfill. Since generation of F006 wastewaters does occur, the premise of no generation as a basis for the treatment standard of "no land disposal" appears to be unjustified. (Please note as an interpretive matter, that supernatant from F006 generation is not considered to be F006, but simply wastewater from treatment of electroplating wastewaters. Filtrate from F006 sludges could be hazardous under the derived-from rule, but if it is similar in terms of identity and concentration of constituents in the influent to the wastewater treatment process, it is not considered to be derived-from F006. Rather, it is the original influent wastewater.)

The Agency is, therefore, not able to promulgate the treatment standard for F006 wastewaters in today's rule. EPA does intend to propose and promulgate numerical treatment standards for F006 wastewaters prior to May 8, 1990. It is likely that these standards will be based upon information available from EPA's NPDES discharge limitation program for electroplating facilities. Since no standard is promulgated in today's rule for F006 wastewaters, this subgroup of wastes is restricted from land disposal according to the "soft hammer" provisions described in other sections of this preamble. [Note.—As discussed in detail in section III.C.3., EPA is

amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of F006 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR F006

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cadmium.....	(¹)	0.066
Chromium (total).....	(¹)	5.2
Lead.....	(¹)	.51
Nickel.....	(¹)	.32
Silver.....	(¹)	.072
Cyanides (total).....	(²)	(²)

¹ Not applicable.

² Reserved.

c. K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol. Today's rule promulgates treatment standards for K001 wastewaters and nonwastewaters. BDAT treatment standards for the organic constituents in K001 wastewaters and nonwastewaters were established based on the performance of a rotary kiln incinerator and specifically on the concentrations found in the residuals. BDAT treatment standards for the metal constituents in K001 nonwastewaters (ash residues) were established based on the performance of a stabilization treatment process and those for the metal constituents in K001 wastewaters were based on chemical precipitation. Other treatment technologies such as biodegradation, solvent extraction, and/or stabilization that can achieve these standards are not precluded from use by this rule.

For all wastes identified as K001, EPA is promulgating final treatment standards for six organic constituents. These are naphthalene, pentachlorophenol, phenanthrene, pyrene, toluene, and xylenes. EPA is also promulgating final treatment standards for lead. The final standard

for pentachlorophenol is the result of a relatively high analytical quantitation limit observed for this particular K001 waste. No data was received which allowed EPA to lower this standard based on lower quantitation limits for pentachlorophenol in other K001 wastes. Therefore, the promulgated standard for this constituent is as proposed.

EPA considered the establishment of treatment standards for polychlorinated dibenzofurans and polychlorinated dibenzodioxins. In the proposed rule, EPA had specifically requested comments on this issue. However, no additional data was submitted which could be evaluated to propose numerical treatment standards for these constituents. Some commenters stated that if EPA set standards for these particular hazardous constituents, no commercial facility would accept these wastes for treatment. In this final rule, EPA is not setting treatment standards for these constituents. However, it is important to point out that, where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date provided that rulemaking procedures are followed. This includes the addition of hazardous constituents such as the polychlorinated dibenzofurans and polychlorinated dibenzodioxins.

Several commenters argued that EPA should not regulate copper or zinc, as EPA proposed to do, because they are not hazardous constituents specifically listed on Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, as discussed earlier. However, in this rulemaking the Agency is only regulating zinc and copper when they are indicators of performance of treatment of other Appendix VIII hazardous constituents. Further, the Agency believes that these metal constituents are controlled by treatment of the metal constituents that are regulated by today's rule and therefore, is not promulgating standards for copper or zinc as part of the treatment standards for K001 wastes.

Several commenters suggested that land treatment also can be considered to be BDAT for this waste. Land treatment is defined as a form of land disposal under section 3004(k). Treatment standards are those that apply before land disposal; wastes must meet these standards before they can be land disposed. See section 3004(m); see also sections 3004 (d), (e), (f), and (g), all of which refer to the (m) standards as

pretreatment standards which apply before land disposal. Moreover, where Congress wished to allow a form of land disposal for wastes not already meeting the treatment standard, it said so directly. See section 3005(j)(11). There is no such directive for treatment in land treatment units of wastes not already meeting the treatment standard (or subject to some type of exception from a prohibition). Consequently, EPA must reject these commenters' suggestions as a matter of law.

BDAT TREATMENT STANDARDS FOR F001 [Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Naphthalene.....	8.0	(¹)
Pentachlorophenol.....	37	(¹)
Phenanthrene.....	8.0	(¹)
Pyrene.....	7.3	(¹)
Toluene.....	.14	(¹)
Xylenes.....	.16	(¹)
Lead.....	(¹)	0.51

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR F001 [Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Naphthalene.....	0.15	(¹)
Pentachlorophenol.....	.88	(¹)
Phenanthrene.....	.15	(¹)
Pyrene.....	.14	(¹)
Toluene.....	.14	(¹)
Xylenes.....	.16	(¹)
Lead.....	.037	(¹)

¹ Not applicable.

d. K015—Still bottoms from the distillation of benzyl chloride. The BDAT treatment standard of "no land disposal" for K015 nonwastewaters was proposed based on the performance of a liquid injection incinerator and the fact that the waste contained no measurable ash (the solid residue from incineration). The detection limit for the ash content of the K015 nonwastewaters studied by EPA was 0.01% by weight. Since no comments were received indicating generation of K015 wastes with detectable levels of ash, EPA has decided that the premise of "no ash" as a basis for the treatment standard of "no land disposal" appears to be justified. Therefore, today's rule promulgates the

final treatment standard of "no land disposal" for all K015. One commenter expressed concern that if K015 were mixed with a waste that did contain an ash, the resultant ash would be subject to the "no land disposal" standard for K015. EPA agrees with the commenter that the standard would be applicable, but believes that blending with a waste or fuel that contains no ash is an option that allows compliance with the "no land disposal" standard for K015. At the same time, EPA also recognizes that K015 may be generated with an ash content if K015 were inadvertently spilled (such as on soil). However, EPA cannot anticipate this type of nonroutine generation and therefore, has to disagree with these commenters. The Agency also believes that for situations such as this, the petition processes for obtaining a variance from the treatment standard provides potential generators with a viable procedure for managing the waste.

The use of other treatment technologies are not precluded by this rule. For example, while rotary kiln and fluidized bed incinerators are generally designed to handle solids and sludges, these units often are designed to incinerate liquids. In any case, where these or other treatment technologies can treat K015 without generating an ash or other solid residual, these units may be used to achieve the "no land disposal" standard for the K015 nonwastewaters.

Today's rule also promulgates final treatment standards for K015 wastewaters for all constituents as proposed. The regulated constituents are anthracene, benzal chloride, benzo (b and/or k) fluoranthene, phenanthrene, toluene, total chromium and nickel. BDAT treatment standards for the organic constituents were established based on the performance of a liquid injection incineration and the concentrations found in the scrubber water. BDAT treatment standards for the metal constituents in wastewaters were based on chemical precipitation. Because no comments were received on the proposed regulation of any of the specific constituents for K015 wastewaters, EPA assumes that generators of K015 wastes agree with EPA's assessment of the treatability of these wastes. All final treatment standards are listed in the following table:

BDAT TREATMENT STANDARDS FOR K015

[Nonwastewaters]

NO LAND DISPOSAL BASED ON NO
ASH

BDAT TREATMENT STANDARDS FOR K015

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Anthracene.....	1.0	(¹)
Benzal chloride.....	.28	(¹)
Benzo (b and/or k) fluoranthene.....	.29	(¹)
Phenanthrene.....	.27	(¹)
Toluene.....	.15	(¹)
Chromium (total).....	.32	(¹)
Nickel.....	.44	(¹)

¹ Not applicable.

e. K016—Heavy ends or distillation residues from the production of carbon tetrachloride. K018—Heavy ends from the fractionation column in ethyl chloride production. K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production. K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride production. K030—Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene. Today's rule promulgates final treatment standards for K016, K018, K019, K020 and K030 wastewaters and nonwastewaters as proposed. These five listed hazardous wastes are generated in the production of chlorinated chemicals in the organic chemical industry. The Agency noted in the April 8, 1988 proposal (53 FR 11755) that K019 was originally scheduled for Part 268 regulation in the Second Third (effective June 8, 1989). However, due to the similarity between K019 and the other wastes in this treatability group (K016, K018, K020 and K030), the Agency has chosen to accelerate the schedule for K019.

Several commenters opposed this accelerated schedule for K019, stating that business operations had been planned based on K019 being regulated in June of 1989. However, the statute does not preclude EPA from prohibiting the land disposal of a given waste ahead of schedule (and the schedule in §§ 268.10-268.12 itself says that wastes will be evaluated by a given date, indicating that the specified date is the latest time by which EPA will act), and in fact compels the Agency to prohibit the land disposal of hazardous wastes as soon as possible. Having identified BDAT and developed treatment standards for K019 wastes, the Agency

believes the most prudent approach is to promulgate the standards and effective date as proposed.

BDAT treatment standards for the organic constituents in these wastes are based on the performance of rotary kiln incineration and the concentrations found in the residuals. Other treatment technologies such as fluidized bed incineration, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule.

As described fully in the background document for these wastes, individual constituent standards from waste code K019 have been transferred to those of constituents in waste codes K016, K018, K020, and K030. The Agency based this transfer of standards primarily on the physical and chemical similarity of the individual organic constituents as well as the similarities in overall characteristics of the individual wastes. Because no comments were received on the proposed regulation of any of the specific constituents for K016, K018, K019, K020 and K030 wastes, EPA assumes that generators of these wastes agree with EPA's assessment that these treatment standards can be achieved. The regulated constituents and BDAT treatment standards for these wastes are listed in the tables at the end of this section.

BDAT TREATMENT STANDARDS FOR K016

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Hexachlorobenzene.....	28	(¹)
Hexachlorobutadiene	5.6	(¹)
Hexachlorocyclopentadiene	5.6	(¹)
Hexachloroethane	28	(¹)
Tetrachloroethene	6.0	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K016

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Hexachlorobenzene.....	0.033	(¹)
Hexachlorobutadiene .....	.007	(¹)
Hexachlorocyclopentadiene .....	.007	(¹)
Hexachloroethane .....	.033	(¹)
Tetrachloroethene .....	.007	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K018

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Chloroethane.....	6.0	(¹)
1,1-Dichloroethane	6.0	(¹)
1,2-Dichloroethane	6.0	(¹)
Hexachlorobenzene.....	28	(¹)
Hexachlorobutadiene	5.6	(¹)
Hexachloroethane	28	(¹)
Pentachloroethane	5.6	(¹)
1,1,1-Trichloroethane	6.0	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K018

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Chloroethane.....	0.007	(¹)
Chloromethane.....	.007	(¹)
1,1-Dichloroethane .....	.007	(¹)
1,2-Dichloroethane .....	.007	(¹)
Hexachlorobenzene.....	.033	(¹)
Hexachlorobutadiene .....	.007	(¹)
Pentachloroethane .....	.007	(¹)
1,1,1-Trichloroethane .....	.007	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K019

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Bis(2-chloroethyl)ether	5.6	(¹)
Chlorobenzene.....	6.0	(¹)
Chloroform.....	6.0	(¹)
1,2-Dichloroethane	6.0	(¹)
Hexachloroethane	28	(¹)
Naphthalene.....	5.6	(¹)
Phenanthrene.....	5.6	(¹)
Tetrachloroethene	6.0	(¹)
1,2,4-Trichlorobenzene	19	(¹)
1,1,1-Trichloroethane	6.0	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K019

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Bis(2-chloroethyl)ether	0.007	(¹)
Chlorobenzene.....	.006	(¹)
Chloroform.....	.007	(¹)
p-Dichlorobenzene.....	.008	(¹)

BDAT TREATMENT STANDARDS FOR
K019—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
1,2-Dichloroethane .....	.007	(¹)
Fluorene .....	.007	(¹)
Hexachloroethane .....	.033	(¹)
Naphthalene .....	.007	(¹)
Phenanthrene .....	.007	(¹)
1,2,4,5-Tetrachlorobenzene .....	.017	(¹)
Tetrachloroethene .....	.007	(¹)
1,2,4-Trichlorobenzene .....	.023	(¹)
1,1,1-Trichloroethane .....	.007	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K020

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
1,2-Dichloroethane	6.0	(¹)
1,1,2,2-Tetrachloroethane	5.6	(¹)
Tetrachloroethene	6.0	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K020

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
1,2-Dichloroethane	0.007	(¹)
1,1,2,2-Tetrachloroethane .....	.007	(¹)
Tetrachloroethene .....	.007	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K030

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Hexachlorobutadiene	5.6	(¹)
Hexachloroethane	28	(¹)
Hexachloropropene	19	(¹)
Pentachlorobenzene	28	(¹)
Pentachloroethane	5.6	(¹)
1,2,4,5-Tetrachlorobenzene	14	(¹)
Tetrachloroethene	6.0	(¹)
1,2,4-Trichlorobenzene	19	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K030

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
o-Dichlorobenzene	0.008	(¹)
p-Dichlorobenzene .....	.008	(¹)
Hexachlorobutadiene .....	.007	(¹)
Hexachloroethane .....	.033	(¹)
Pentachloroethane .....	.007	(¹)
1,2,4,5-Tetrachlorobenzene .....	.017	(¹)
Tetrachloroethene .....	.007	(¹)
1,2,4-Trichlorobenzene .....	.023	(¹)

¹ Not applicable.

f. K022—Distillation bottom tars from the production of phenol/acetone from cumene. Today's rule promulgates final treatment standards for K022 nonwastewaters as proposed. Treatment standards for the organic constituents in these wastes are based on the performance of a fuel substitution unit and the concentrations found in the ash residuals. Treatment standards for the metal constituents in nonwastewaters (ash residues) are based on the performance of a stabilization treatment process. Other treatment technologies such as liquid injection incineration, rotary kiln incineration, and fluidized bed incineration, that can achieve these standards are not precluded from use by this rule.

The variety in types of alternative incineration units that are potentially applicable and are believed able to achieve the treatment standards, is primarily due to the physical form of the K022 nonwastewaters. As initially generated, K022 wastes are still bottoms that are typically pumped directly from the distillation unit as viscous organic liquids, while they remain hot. Upon cooling, the viscosity of the waste will increase and K022 can become tarry and viscous. It can be kept fluidized by mixing it with various light hydrocarbons, waste olefinic oils or solvents. If not fluidized or kept hot, the waste will eventually harden into an organic solid. One commenter suggested that these viscous or hardened solids should be able to be reheated and thus, fluidized. While the Agency has not verified this, it believes that the immediate onsite management of the waste is the determining factor on whether the waste can be handled as a liquid or as a solid.

For wastes identified as K022 nonwastewaters, EPA is promulgating final treatment standards for seven constituents. These are toluene, acetophenone, phenol, diphenylamine,

diphenylnitrosamine, nickel and total chromium. The standard for diphenylamine and diphenylnitrosamine is listed as the sum of these constituents. This is necessary because the two compounds cannot be distinguished using EPA's standard analytical testing procedure.

At the time of this rule, the Agency had not completed its evaluation of waste characterization and treatment information for sulfide. The proposed rule contained the notation "reserved" for these constituents, noting that EPA would be setting standards when the evaluation was completed. Several commenters suggested that a treatment standard of "reserved" was confusing to the regulated community and unnecessary. Since individual standards would still have to be proposed and promulgated through the normal rulemaking procedures, no benefit is achieved by the "reserved" notation for these constituents. Therefore, the Agency has dropped it from the final rule for this waste code.

In the proposed rule EPA considered establishing treatment standards for polychlorinated dibenzofurans and polychlorinated dibenzodioxins for ash residuals from the burning or incineration of K022 nonwastewaters. A sample of untreated ash from the burning of K022 as a fuel substitute was analyzed for isomers of chlorinated dibenzofurans and chlorinated dibenzodioxins. A trace amount (parts per trillion) of tetrachlorodibenzofurans (TCDF) was detected in this sample. This amount was determined to be below the typical BDAT quantitation level for these compounds. In the proposed rule, EPA had specifically requested comments on the issue of regulating these compounds. Also, the Agency had noted that it was reexamining the analytical quantification procedures for the reported tetrachlorodibenzofurans. The Agency has since discovered that the laboratory that performed the analysis for isomers of chlorinated dibenzofurans and chlorinated dibenzodioxins had failed to provide audit samples or fortified (spiked) samples. Thus, the accuracy of quantification below the typical BDAT quantitation levels for the reported tetrachlorodibenzofurans can not be determined. EPA has concluded that additional analysis reproducing these results, with the proper QA/QC performed, would be required before EPA can consider development of treatment standards for these compounds. No additional data were submitted from commenters that could

be evaluated to propose treatment standards for these constituents.

As described fully in the background document for this waste, individual standards for total chromium and nickel for the K022 nonwastewaters have been transferred from the performance of solidification on F006 wastes. The Agency based this transfer of standards based primarily on the physical and chemical similarity of the individual metal constituents as well as the similarities in overall characteristics of the wastes. Because no comments were received on the proposed regulation of any of the specific constituents for K022, EPA assumes that generators of these wastes agree with EPA's assessment that these treatment standards can be achieved. The regulated constituents and BDAT treatment standards for these wastes are listed in the tables at the end of this section.

The BDAT treatment standard of "no land disposal" for K022 wastewaters was proposed based on the performance of a fuel substitution unit that generated no scrubber water. This information was the basis of the "no land disposal" standard for K022 wastewaters. In the proposed rule, EPA specifically requested comment on the premise of the "no land disposal". In response, one commenter stated that he does generate K022 wastewaters as a scrubber water. Other commenters have identified additional potential sources of wastewater forms of K022 such as those being generated at a CERCLA site, during a corrective action at a RCRA facility, and as a leachate from a landfill where K022 nonwastewaters or K022 ash residues have been previously disposed. Since generation of these wastewaters has been identified, the premise of "no generation" appears to be unjustified. As a result, the Agency has decided to not promulgate a final rule of "no land disposal" K022 wastewaters. EPA does intend to propose and promulgate treatment standards for these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule for K022 wastewaters, these wastes are restricted from land disposal according to the "soft hammer" provisions described in other sections of this preamble. [NOTE: As discussed in detail in section III.C.3., EPA is amending section 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft

hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K022 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in non-minimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR K022

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acetophenone.....	19	(¹)
Sum of diphenylamine and diphenylnitrosamine..	13	(¹)
Phenol.....	12	(¹)
Toluene.....	.034	(¹)
Chromium (total).....	(¹)	5.2
Nickel.....	(¹)	.32

¹ Not applicable.

g. K024—Distillation bottom tars from the production of phthalic anhydride from naphthalene. Today's rule promulgates final treatment standards for K024 wastewaters and nonwastewaters. (The Agency notes that the proposed treatment standards (see 53 FR 11757 and 11790; April 8, 1988) were in error; however, the background document for the proposed rule contained the correct concentration levels for phthalic acid—which are being promulgated today). Treatment standards are based on the performance of rotary kiln incineration and the concentrations found in the ash and scrubber water residuals. Other treatment technologies such as fluidized bed incineration and fuel substitution that can achieve these standards are not precluded from use by this rule.

EPA is regulating phthalic acid for both K024 wastewaters and K024 nonwastewaters. This constituent, although not listed as a hazardous constituent in Part 261 Appendix VIII, is being regulated as a surrogate for phthalic anhydride. Phthalic anhydride is a hazardous constituent; however, it cannot be easily analyzed, in that the analytical method readily hydrolyzes the compound to phthalic acid. The

BDAT treatment standards for these wastes are listed in the following tables:

BDAT TREATMENT STANDARDS FOR K024

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Phthalic acid.....	28	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K024

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Phthalic acid.....	0.54	(¹)

¹ Not applicable.

h. K037—Wastewater treatment sludge from the production of Disulfoton. Today's rule promulgates final treatment standards for K037 wastewaters and nonwastewaters as proposed. Treatment standards are based on the performance of rotary kiln incineration and the concentrations found in the ash and scrubber water residuals. Other treatment technologies such as fluidized bed incineration, fuel substitution units, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule.

EPA is regulating Disulfoton and toluene for K037 wastewaters and K037 nonwastewaters. Because no comments were received on the proposed regulation of these standards, EPA assumes that generators of these wastes agree with EPA's assessment that these treatment standards can be achieved. The BDAT treatment standards for these wastes are listed in the following tables:

BDAT TREATMENT STANDARDS FOR K037

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Disulfoton.....	0.1	(¹)
Toluene.....	28	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K037

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Disulfoton.....	0.003	(1)
Toluene.....	.028	(1)

(1) Not applicable.

i. **K044—Wastewater treatment sludges from the manufacturing and processing of explosives. K045—Spent carbon from the treatment of wastewater containing explosives. K047—Pink/red water from TNT operations.** Today's rule promulgates "no land disposal" as the final treatment standard for K044, K045 and K047 wastewaters and nonwastewaters. The treatment standard for these wastes was established based on EPA's determination that open burning and open detonation of reactive (e.g., explosive) wastes is not considered land disposal. So long as no reactive constituents remain after detonation, there would be no land disposal of a hazardous waste (40 CFR 261.3(a)(2)(iii)). In order to provide clarification, EPA has modified the "no land disposal" standard to read "no land disposal based on reactivity".

Other technologies, such as incineration in specially designed explosion protected units and chemical deactivation processes, that can render these wastes nonreactive are not precluded from use by this rule based on a determination that residues from these technologies are no longer reactive (i.e., explosive).

One commenter pointed out that there are no established and approved analytical methods to determine the reactivity characteristic for wastes. The commenter noted that approved methods would be useful in determining whether the treatment of K044, K045, K046, and K047 was sufficient to render the waste nonreactive. The Agency agrees with the commenter to the fact that there is no official OSW analytical method (i.e., according to SW-846, 3rd ed.) to test for reactivity. However, the Agency has recently reviewed a testing protocol developed by the Department of Defense to measure the characteristic of reactivity for their hazardous wastes. While this protocol does not contain official OSW methods, the Agency believes that it represents logical and safe analytical procedures for determining the characteristic of reactivity (particularly for explosive wastes). Additional information on this

protocol can be found in the background document for K046.

BDAT TREATMENT STANDARDS FOR K044, K045, AND K047

[Nonwastewaters and wastewaters]

NO LAND DISPOSAL BASED ON REACTIVITY

j. **K046—Wastewater treatment sludges from the manufacturing, formulation, and loading of lead based initiating compounds.** Today's rule promulgates a final treatment standard only for those K046 nonwastewaters that are nonreactive. A TCLP treatment standard for lead was established for these wastes based on the performance of a stabilization process. The K046 that was specifically sampled and tested by the Agency was nonreactive (i.e., nonexplosive) as originally generated. This standard does not apply to K046 nonwastewaters that are reactive (i.e., explosive) as originally generated. Residues from the open detonation, open burning, or incineration of K046 nonwastewaters that are reactive as originally generated do not have to meet these standards.

Commenters to the proposed rule stated that the data used to set the treatment standard for nonreactive K046 nonwastewaters may not be representative of their K046 wastes. Descriptions of their processes and their wastes indicated that they are generating reactive K046 wastes that they are subsequently treated by open detonation or open burning, thus creating nonreactive K046 residuals. It was these wastes that they stated were different from the nonreactive K046 that EPA studied.

The waste sampled and tested by the Agency consisted primarily of a lead carbonate sludge generated from a chemical treatment process for wastewater that originally contained the explosive compound lead azide. This sludge contained approximately 95% water and approximately 1,000 ppm total lead. In contrast, residues from one facility consist of solid ash from burning or detonating a K046 that includes lead-based initiating compounds and other explosives. The Agency recognizes that these wastes are inherently different and were not examined by EPA during the development of the K046 treatment standards. The Agency intends to reexamine the data based on its testing of nonreactive K046 nonwastewaters and determine whether the data can be extrapolated to reactive K046 wastes containing untreated lead azide or

whether new data must be obtained to set treatment standards for those residues from open detonation, open burning or specialized incineration of K046 wastes that were originally reactive as generated.

In today's rule, the Agency is taking this information into account and is setting treatment standards only for those K046 nonwastewaters that are nonreactive (i.e., nonexplosive) when they are initially generated. Reactive K046 nonwastewaters that must be open detonated do not have to meet the treatment standard promulgated as final in today's rule. No comments or data were received that specifically indicated the existence of nonreactive K046 (other than nonreactive residuals from open detonation or open burning of K046 that were originally explosive as generated) that could not meet the proposed treatment standard for lead. Therefore, the Agency assumes that generators of these nonreactive (as generated) K046 wastes agree with EPA's assessment that these treatment standards can be achieved.

Some commenters indicated that they generate a mixture of K044 and K046 and were concerned that the preamble is unclear as to whether reactive K046 wastes can first be treated by open burning or open detonation to remove the reactivity hazard before stabilization. Stabilization of reactive K046 or mixtures of nonreactive K046 with reactive K044, K045, K047 or other explosive wastes would require excessive handling in an essentially untried manner. It would be dangerous and contrary to industry safety practices to impose such requirement without adequate safety testing. The Agency agrees with these commenters, in that EPA is uncertain of the risk associated with pretreating reactive (i.e., explosive) K046 wastes by open burning to eliminate the explosion hazard. Residues that do not meet the treatment standards can promptly be removed for treatment by stabilization at facilities equipped and authorized to carry out such activities. This scenario eliminates the safety hazards while addressing environmental concerns related to the toxic constituents in the waste. However, the Agency prohibits the mixing of nonreactive K046 wastes (those that are nonreactive as initially generated) with explosive wastes such as K044, K045 or K047 in order to avoid the applicability of the promulgated final treatment standard for nonreactive K046 nonwastewaters.

In the proposed rule, the Agency recognized the existence of the generation of reactive (i.e., explosive)

K046 nonwastewaters and proposed a treatment standard of "no land disposal" for these wastes based on the same rationale that the Agency used for K044, K045 and K047. However, the Agency now realizes that this rationale is not applicable because the lead present in the wastes would remain on the ground after open detonation. The Agency believes that these residues could be physically removed from the land and solidified to prevent leaching of the lead. However, the Agency has not investigated the concentration of lead in these residuals nor has it investigated the performance of solidification for these. As a result, the Agency is, therefore, not able to promulgate the "no land disposal" treatment standard for the explosive K046 nonwastewaters in today's rule. EPA does intend to propose and promulgate treatment standards for these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule for reactive K046 nonwastewaters, these wastes are restricted from land disposal according to the "soft hammer" provisions described in other sections of this preamble.

In the proposed rule, the Agency also proposed a treatment standard of "no land disposal" for all K046 wastewaters, based on the premise that they would not be generated. Several commenters have identified specific sources of wastewater forms of K046 such as those being generated at a CERCLA site, during a corrective action at a RCRA facility, and as a leachate from a landfill. Since generation of K046 wastewaters does occur, the premise of "no generation" as a basis for the treatment standard of "no land disposal" appears to be unjustified. The Agency is, therefore, not able to promulgate the treatment standard for K046 wastewaters in today's rule. EPA does intend to propose and promulgate numerical treatment standards for these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule for K046 wastewaters, this subgroup of wastes is restricted from land disposal according to the "soft hammer" provisions described in other sections of this preamble. [Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third.

Thus, these types of K046 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

One commenter pointed out that there are no established and approved analytical methods to determine the reactivity characteristic for wastes. The commenter noted that approved methods would be useful in determining whether the treatment of K044, K045, K046, and K047 was sufficient to render the waste nonreactive. The Agency agrees with the commenter to the fact that there is no official OSW analytical method (i.e., according to SW 846, 3rd ed.) to test for reactivity. However, the Agency has recently reviewed a testing protocol developed by the Department of Defense to measure the characteristic of reactivity for their hazardous wastes. While this protocol does not contain official OSW methods, the Agency believes that it represents logical and safe analytical procedures for determining the characteristic of reactivity (particularly for explosive wastes). Further, the Agency believes that this testing protocol can be used as guidance in the determination of the applicability of the treatment standards for K046 wastes (i.e., the determination of whether the K046 waste is in the reactive or nonreactive subcategory). Additional information on this protocol can be found in the background document for K046.

BDAT TREATMENT STANDARDS FOR K046

[Nonwastewaters]

[Nonreactive subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Lead	(¹)	0.18

¹ Not applicable.

k. *K048—Dissolved air flotation (DAF) float from the petroleum refining industry.* *K049—Slop oil emulsion solids from the petroleum refining industry.* *K050—Heat exchanger bundle cleaning sludge from the petroleum refining industry.* *K051—API separator sludge from the petroleum refining industry.* *K052—Tank bottoms (leaded) from the petroleum refining industry.* In today's rule EPA is promulgating treatment standards for wastewater and nonwastewater forms of K048, K049,

K050, K051 and K052. These standards are based on reanalysis of the original treatment data for incineration and solvent extraction, as well as analysis of additional, recently submitted data on solvent extraction. In the proposed rule and background document for these wastes, the Agency had indicated that there was a statistical difference between these technologies. Several commenters pointed out that this difference is for only a few constituents and that the two technologies can achieve comparable performance for the majority of constituents. They also believe that there is little environmental benefit achieved in using the incineration performance data as the sole basis for setting treatment standards versus the incorporation of the solvent extraction data into the standard. They stated that both technologies could achieve concentrations of hazardous constituents in the residuals that were below health based limits for those constituents.

EPA's own statistical (ANOVA) comparison of the two technologies confirms that fluidized bed incineration provides significantly better treatment than solvent extraction for naphthalene and xylenes. However, for eleven other organic constituents there is no significant difference in achievable performance.

The proposed BDAT standards for K048–K052 nonwastewaters were based solely on the results obtained from the analysis of residual samples from incineration of K048 and K051 wastes at one refinery. Prior to the April 8, 1988 proposed regulation, industry had submitted treatment data for K048–K052 wastes using solvent extraction technologies. These data were incomplete for incorporation into the proposed standard, primarily because they did not include any total constituent concentrations in the wastes prior to treatment. During the comment period, these additional data, as well as other industry data, were provided to EPA, allowing the Agency to complete its analysis of the technology.

The solvent extraction process that was examined is designed to recover and recycle petroleum products from the K048–K052 nonwastewaters. Use of the technology thus furthers the broad Congressional goal of resource recovery as a preferred alternative to waste treatment alone (see, e.g. H.R. Rep. No. 198, 98th Cong. 1st Sess. at 31). Several commenters indicated that it also may be easier to obtain treatment permits for solvent extraction units than for incinerators due to less public concern

over the presence of these type of units in the community.

EPA has considered all of these comments and has decided that the resource recovery achieved by solvent extraction justifies its inclusion in the development of BDAT treatment standards. Therefore, EPA has established solvent extraction and incineration as BDAT for K048-K052 nonwastewaters and is promulgating revised numerical standards. EPA does not believe that this conflicts with the promulgated BDAT methodology.

A few weeks before promulgation of the final regulation, EPA received data showing performance of other types of solvent extraction systems on K048-K052. These data appear to indicate superior treatment of xylene and naphthalene than the system on which EPA is basing its treatment standards. The Agency has not had the opportunity to fully evaluate these data, however, nor has any member of the petroleum industry had the opportunity to comment on them. EPA consequently does not feel justified in basing treatment standards on this information. However the Agency is continuing to study these data and will propose to revise the treatment standards if such examination shows that significantly lower levels are actually achievable. Such a proposal may appear, for example, as part of the Second Third proposed rulemaking, expected a few months from now. However, as a result of these data, EPA believes it unwarranted to promulgate treatment standards for xylenes and naphthalene at the present time, and accordingly is reserving treatment standards for these constituents.

Today's rule promulgates treatment standards for all of the organic constituents proposed for K048, K049, K050, K051 and K052 nonwastewaters. Additionally, several other organic constituents are being regulated that were identified in characterization data for these wastes. EPA's testing of fluidized bed incineration showed substantial treatment of these constituents. However, treatment standards were not originally proposed for them because the Agency believed that they would be controlled by incineration and regulation of other organic constituents in the nonwastewater residuals from incineration. They are being regulated in

today's rule because the additional data submitted by industry indicated that solvent extraction achieves substantial treatment for these constituents. However, the Agency does not have any data that indicate that these constituents would be necessarily controlled by solvent extraction if only the other organic constituents are regulated. The standards for the organic constituents are based on the results of the performance achievable by solvent extraction and/or incineration. Standards for arsenic, total chromium, nickel, and selenium are established based on the performance of a stabilization process. It is important to point out that while the standards for organic constituents are based on data obtained from solvent extraction and fluidized bed incineration, other treatment technologies such as rotary kiln incineration and biodegradation that can achieve these standards are not precluded from use by this rule.

Several commenters argued that EPA should not regulate copper, vanadium or zinc because they are not constituents specifically listed on Appendix VIII of 40 CFR part 261. The Agency does not totally agree, but is not adopting standards for these metals for reasons stated earlier in connection with F006 wastes. The final revised BDAT treatment standards for K048, K049, K050, K051 and K052 are listed in the tables at the end of this section.

Several commenters stated that dewatering technologies such as vacuum filtration, plate and frame pressure filtration, and centrifugation, as well as thermal drying, should be allowed and should be the basis of BDAT. They also provided leachability data on the residuals from these process. However, no total constituent concentration data were provided for comparison to the performance of incineration and solvent extraction. While these technologies do reduce the water content in the waste and generally reduce the volume of solid residuals that require disposal, they do not perform as well as incineration and solvent extraction technologies that EPA has determined to be BDAT for these wastes. A detailed comparison of these technologies is provided in the BDAT background documents for these wastes, located in the docket for this rule. At the same time, it is important to point out that these dewatering technologies are not precluded from use by this

regulation and can be considered applicable technologies when used alone or when incorporated into an additional treatment train, provided that they produce a residual that can achieve the constituent concentrations in the treatment standards for that particular waste.

The proposed BDAT standards for organic constituents in K048-K052 wastewaters were based on a transfer of performance data for the scrubber water residual from the incineration of a similar waste. The Agency has recently completed an analysis of scrubber waters from the incineration of a K048 waste (performed earlier this year). The results of this analysis are comparable to the treatment performance data that were the basis for the proposed standards. The Agency has decided to promulgate the final treatment standards for K048-K052 wastewaters based on revised standards using the data from the incineration of the K048 waste.

Several additional organic constituents are being regulated in the K048-K052 wastewaters. These constituents were identified in characterization data for untreated K048-K052 wastes. EPA's testing of fluidized bed incineration showed substantial treatment of these constituents. However, treatment standards were not proposed for them because the Agency believed that they would be effectively controlled by incineration and regulation of other organic constituents (as indicators for these constituents) in the wastewaters. The Agency has chosen to regulate these additional organic constituents because it does not have any data that indicate that these constituents would be necessarily controlled by solvent extraction if only the other organic constituents are regulated. Because the Agency did not receive any comments nor solvent extraction treatment data for the K048-K052 wastewater residuals (from solvent extraction), the promulgated standards for the organic constituents in K048-K052 wastewaters are based on the results of the performance achievable by fluidized bed incineration. Today's rule also promulgates final treatment standards for metal constituents in K048-K052 wastewaters based on a transfer of treatment performance data (with the

exception of arsenic values, which are based on treatment of wastewaters of these petroleum refining wastes) for wastewaters containing metals using chromium reduction, lime and sulfide precipitation and vacuum filtration, as proposed.

BDAT TREATMENT STANDARDS FOR K048

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Benzene.....	9.5	(¹)
Benzo(a)pyrene.....	0.84	(¹)
Bis(2-ethylhexyl)phthalate..	37	(¹)
Chrysene.....	2.2	(¹)
Di-n-butyl phthalate.....	4.2	(¹)
Ethylbenzene.....	67	(¹)
Naphthalene.....	(²)	(¹)
Phenanthrene.....	7.7	(¹)
Phenol.....	2.7	(¹)
Pyrene.....	2.0	(¹)
Toluene.....	9.5	(¹)
Xylenes.....	(²)	(¹)
Cyanides (total).....	1.8	(¹)
Arsenic.....	(¹)	0.004
Chromium (total).....	(¹)	1.7
Nickel.....	(¹)	0.048
Selenium.....	(¹)	0.025

¹ Not applicable.
² Reserved.

BDAT TREATMENT STANDARDS FOR K048

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Benzene.....	0.011	(¹)
Benzo(a)pyrene.....	.047	(¹)
Bis(2-ethylhexyl)phthalate..	.043	(¹)
Chrysene.....	.043	(¹)
Di-n-butyl phthalate.....	.060	(¹)
Ethylbenzene.....	.011	(¹)
Fluorene.....	.050	(¹)
Naphthalene.....	.033	(¹)
Phenanthrene.....	.039	(¹)
Phenol.....	.047	(¹)
Pyrene.....	.045	(¹)
Toluene.....	.011	(¹)
Xylenes.....	.011	(¹)
Chromium (total).....	.20	(¹)
Lead.....	.037	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K049

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Anthracene.....	6.2	(¹)
Benzene.....	9.5	(¹)
Benzo(a)pyrene.....	0.84	(¹)

BDAT TREATMENT STANDARDS FOR K049—Continued

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Bis(2-ethylhexyl)phthalate..	37	(¹)
Chrysene.....	2.2	(¹)
Ethylbenzene.....	67	(¹)
Naphthalene.....	(²)	(¹)
Phenanthrene.....	7.7	(¹)
Phenol.....	2.7	(¹)
Pyrene.....	2.0	(¹)
Toluene.....	9.5	(¹)
Xylenes.....	(²)	(¹)
Cyanides (total).....	1.8	(¹)
Arsenic.....	(¹)	0.004
Chromium (total).....	(¹)	1.7
Nickel.....	(¹)	0.048
Selenium.....	(¹)	0.025

¹ Not applicable.
² Reserved.

BDAT TREATMENT STANDARDS FOR K049

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Anthracene.....	0.039	(¹)
Benzene.....	.011	(¹)
Benzo(a)pyrene.....	.047	(¹)
Bis(2-ethylhexyl)phthalate..	.043	(¹)
Carbon disulfide.....	.011	(¹)
Chrysene.....	.043	(¹)
2,4-Dimethylphenol.....	.033	(¹)
Ethylbenzene.....	.011	(¹)
Naphthalene.....	.033	(¹)
Phenanthrene.....	.039	(¹)
Phenol.....	.047	(¹)
Pyrene.....	.045	(¹)
Toluene.....	.011	(¹)
Xylenes.....	.011	(¹)
Chromium (total).....	.20	(¹)
Lead.....	.037	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K050

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Benzo(a)pyrene.....	0.84	(¹)
Phenol.....	2.7	(¹)
Cyanides (total).....	1.8	(¹)
Arsenic.....	(¹)	0.004
Chromium (total).....	(¹)	1.7
Nickel.....	(¹)	0.048
Selenium.....	(¹)	0.025

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K050

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Benzo(a)pyrene.....	0.047	(¹)
Phenol.....	.047	(¹)
Chromium (total).....	.20	(¹)
Lead.....	.037	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K051

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Anthracene.....	6.2	(¹)
Benzene.....	9.5	(¹)
Benzo(a)anthracene.....	1.4	(¹)
Benzo(a)pyrene.....	.84	(¹)
Bis(2-ethylhexyl)phthalate..	37	(¹)
Chrysene.....	2.2	(¹)
Di-n-butyl phthalate.....	4.2	(¹)
Ethylbenzene.....	67	(¹)
Naphthalene.....	(²)	(¹)
Phenanthrene.....	7.7	(¹)
Phenol.....	2.7	(¹)
Pyrene.....	2.0	(¹)
Toluene.....	9.5	(¹)
Xylenes.....	(²)	(¹)
Cyanides (total).....	1.8	(¹)
Arsenic.....	(¹)	0.004
Chromium (total).....	(¹)	1.7
Nickel.....	(¹)	.048
Selenium.....	(¹)	.025

¹ Not applicable.
² Reserved.

BDAT TREATMENT STANDARDS FOR K051

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acenaphthene.....	0.050	(¹)
Anthracene.....	.039	(¹)
Benzene.....	.011	(¹)
Benzo(a)anthracene.....	.043	(¹)
Benzo(a)pyrene.....	.047	(¹)
Bis(2-ethylhexyl)phthalate..	.043	(¹)
Chrysene.....	.043	(¹)
Di-n-butyl-phthalate.....	.060	(¹)
Ethylbenzene.....	.011	(¹)
Fluorene.....	.050	(¹)
Naphthalene.....	.033	(¹)
Phenanthrene.....	.039	(¹)
Phenol.....	.047	(¹)
Pyrene.....	.045	(¹)
Toluene.....	.011	(¹)
Xylenes.....	.011	(¹)
Chromium (total).....	.20	(¹)
Lead.....	.037	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K052

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Benzene.....	9.5	(1)
Benzo(a)pyrene.....	.84	(1)
o-Cresol.....	2.2	(1)
p-Cresol.....	.90	(1)
Ethylbenzene.....	67	(1)
Naphthalene.....	(2)	(1)
Phenanthrene.....	7.7	(1)
Phenol.....	2.7	(1)
Toluene.....	9.5	(1)
Xylenes.....	(2)	(1)
Cyanides (total).....	1.8	(1)
Arsenic.....	(1)	0.004
Chromium (total).....	(1)	1.7
Nickel.....	(1)	.048
Selenium.....	(1)	.025

(1) Not applicable.

(2) Reserved.

BDAT TREATMENT STANDARDS FOR K052

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Benzene.....	0.011	(1)
Benzo(a)pyrene.....	.047	(1)
o-Cresol.....	.011	(1)
p-Cresol.....	.011	(1)
2,4-Dimethylphenol.....	.033	(1)
Ethylbenzene.....	.011	(1)
Naphthalene.....	.033	(1)
Phenanthrene.....	.039	(1)
Phenol.....	.047	(1)
Toluene.....	.011	(1)
Xylenes.....	.011	(1)
Chromium (total).....	.20	(1)
Lead.....	.037	(1)

(1) Not applicable.

1. K061—Emission control dust/sludge from the primary production of steel in electric furnaces. Today's rule revises and promulgates final treatment standards for K061 nonwastewaters. The standards proposed on April 8, 1988, were based on the performance of a high temperature metals recovery (HTMR) unit. HTMR results in the formation of a residual slag which was analyzed to determine the performance of this technology. EPA received extensive comments from industry demonstrating the applicability, demonstrability, and economics of HTMR for low zinc content K061. As initially proposed, treatment standards for K061 wastes with greater than 2.4% total zinc were based on HTMR. However, the applicability of these standards was based on the concentration of zinc in the residual slag from HTMR; EPA did not consider the

optimum operating feed concentrations for zinc. Several commenters specifically stated that HTMR is not feasible at total zinc concentrations in the feed material of below 5% by weight. Other commenters proposed minimum zinc concentrations of 20% zinc. The majority of the comments centered on 15% zinc as a minimum. Review of the sampling data from EPA's testing of HTMR indicates that the minimum feed concentration of zinc was 12.9% and the mean value of the feed concentrations was 14.3%. Many commenters urged EPA to establish treatment standards based on the performance of stabilization, with the concentration levels to be based on the data contained in EPA's background document for the proposed rule.

Based on review of this data and in response to the comments on minimum feed concentration of zinc, the Agency has decided to promulgate a final rule with two subcategories of K061 nonwastewaters: a High Zinc Subcategory (greater than or equal to 15% total zinc) and a Low Zinc Subcategory (less than 15% total zinc).

For the K061 High Zinc Subcategory, a final BDAT treatment standard of "no land disposal" will become effective on August 8, 1990, based on HTMR. As described later in this preamble, EPA is deferring the effective date until August 8, 1990 because of inadequate HTMR capacity to meet the demand that will be created by this rule. During the two year period until August 8, 1990, interim treatment standards for the K061 High Zinc Subcategory, based on stabilization, are applicable. These interim standards are identical to the final standards for the K061 Low Zinc Subcategory described in this section.

EPA sees no legal obstacle in adopting an interim treatment standard until such time as the "no land disposal" standard takes effect. If there is insufficient capacity presently available for the best treatment technology, EPA is not precluded from requiring that the next best treatment be utilized in the interim. The alternative would be to allow disposal of untreated hazardous wastes during the interim period. In addition, during the two year period, K061 wastes in the High Zinc Subcategory treated to meet the interim standard based on stabilization may be disposed in landfills that do not meet the minimum technology requirements. Since many commenters complained that if K061 became subject to the soft hammer they would be unable to dispose of the waste in these types of units, an interim treatment standard affords these commenters a measure of relief.

The treatment standard of "no land disposal" for the High Zinc Subcategory of K061 is based on the use of HTMR to recover zinc from K061 containing more than 15% total zinc. Several classes of HTMR systems exist including rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, and rotary hearth kiln/electric furnace combinations. EPA is not requiring or recommending any specific class of HTMR as BDAT. The Agency believes that establishing HTMR as BDAT for these wastes is consistent with the national policy identified in HSWA to reduce the quantity of hazardous constituents treated and disposed. EPA has data that indicate that approximately 75% (by volume) of K061 wastes are classified as high zinc K061 wastes and contain zinc at concentrations equal to or greater than 15% by weight. At the same time, up to 60% of the total number of facilities generating K061 generate low zinc K061 wastes representing only 25% of the volume of K061.

In considering the HTMR standard for K061 wastes in the High Zinc Subcategory and specifically whether or not to express the standard as concentrations in the residuals from HTMR, the Agency considered the position stated in the proposed rule that if a secondary material being reclaimed in an industrial furnace is "indigenous" to that furnace, it ceases being a waste when it is reclaimed. The Agency has proposed to define "indigenous" to be any material generated by the same type of furnace in which it will be reclaimed. See proposed § 266.30(a), 52 FR 17034, May 6, 1987. The Agency considered other possible alternatives in the May 6, 1987 proposal, and commenters suggested additional possible interpretations which the Agency is now considering. However, the type of processing used to recover zinc from K061, plus the similarity of K061 to the raw materials smelted in zinc furnaces, appears to qualify K061 as "indigenous" under any of the current options being considered. Therefore, the Agency is promulgating a "no land disposal" standard for the High Zinc Subcategory in anticipation that a final definition of "indigenous" wastes that would include HTMR of K061 will be promulgated prior to the August 8, 1990 effective date of this standard. Also, the Agency is not precluded from revising the HTMR standard of "no land disposal" if the definition of "indigenous" waste is not made final or if it is altered in a way that might conceivably implicate the slag.

For the K061 Low Zinc Subcategory, final BDAT treatment standards, based on stabilization, will become effective on August 8, 1988. The regulated constituents and BDAT treatment standards for the two subcategories of K061 nonwastewaters are listed in the tables at the end of this section.

The revised BDAT treatment standards based on stabilization were established using performance data collected by EPA and previously referenced in the K061 and F006 background documents for the proposed rule. For lead and cadmium, the treatment standards for both subcategories are based on stabilization of a waste in the K061 nonwastewater High Zinc Subcategory. For total chromium, the treatment standards are based on stabilization of F006 wastes containing chromium. EPA has decided to transfer the chromium standard from F006 nonwastewaters to K061 nonwastewaters as a result of comments from manufacturers of specialty and stainless steel. These commenters pointed out that their K061 wastes required a separate treatment standard, due to high concentrations of chromium compared to the K061 from carbon steel manufacturers, which EPA tested. The Agency evaluated all available data characterizing K061 generated by specialty steel, stainless steel, and carbon steel production. The Agency agrees that there is a need to establish a treatment standard that accounts for the higher concentrations of chromium present in K061 generated by specialty and stainless steel production. Consequently, the Agency is promulgating the treatment standard for chromium based on stabilization of F006 electroplating wastes, many of which contain concentrations of chromium similar to those found in K061 generated by specialty and stainless steel production.

Nickel has been added to the list of regulated constituents since the time of proposal for two reasons. First, the proposed treatment standard was based on a technology (HTMR) which concentrated nickel in the treatment residual, and therefore, was not proposed as a regulated constituent. The final rule is based on a technology (stabilization) which shows significant reductions in the leachability of nickel. Since the final rule establishes metal concentrations in the waste extract, the Agency is establishing treatment standards for all constituents which are present at significant concentrations. For further discussion of regulated constituents see the Background Document for K061. Second, several

commenters presented data showing that K061 from specialty and stainless steel production contain higher concentrations of chromium and nickel than the K061 from carbon steel which were previously stabilized. The Agency agrees that nickel is present in these K061 wastes at significantly higher levels, and therefore, is promulgating a treatment standard for nickel. This standard is based on stabilization of electroplating wastes (F006) containing concentrations of nickel similar to these K061 wastes.

For all K061 nonwastewaters, BDAT treatment standards are established based on cadmium, total chromium, lead and nickel concentrations in the waste extract using the TCLP. Several commenters questioned the Agency's decision not to use the data submitted as concentrations of constituents in the waste extract from the Extraction Procedure (EP) test. Several commenters also suggested that EP and TCLP test results were similar for K061. Data was submitted comparing EP and TCLP results for stabilized K061 wastes. This data showed no statistical difference in the results for the regulated constituents; however, the EP data did not include important information necessary for complete evaluation. Information missing included waste characterization of the untreated K061 wastes, design and operating data, mix ratios of solidification reagents, and laboratory quality assurance data. Consequently, the stabilization data provided which contained EP extract results were not used in calculation of the treatment standards for K061 nonwastewaters.

Several commenters stated that EPA should not regulate zinc because it is not a constituent specifically listed on Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, in that zinc cyanide and zinc phosphide are listed on Appendix VIII. Further, zinc is an aquatic toxin, and the Agency considered adding it to Appendix VIII for that reason. However, in this rulemaking the Agency is only regulating zinc when it is an indicator of performance of treatment for other Appendix VIII constituents. Further, the Agency believes that zinc is controlled by stabilization of the metal constituents that are regulated by today's rule and is not promulgating zinc standards for either of the subcategories of K061.

However, the Agency is establishing the definitions of these subcategories based on the total concentration of zinc. While a treatment standard is not actually being set, it is necessary to determine the total zinc concentration to determine applicability of the

appropriate standard. (See EPA Document SW-846, "Test Methods for Evaluating Solid Wastes", Third Edition, for guidance on composite sampling to determine if the 15 percent limit is met.) A facility is not allowed to dilute or perform partial treatment on a K061 waste in order to switch the applicability of the standard for the High Zinc Subcategory to the standard for the Low Zinc Subcategory. However, the Agency does recognize that K061 wastes in the Low Zinc Subcategory are often blended with wastes in the High Zinc Subcategory in order to obtain an optimum feed concentration for zinc. The Agency does not intend to preclude this operation, and furthermore, believes that this should not be a restricted practice, because the effective result of this practice is the applicability of a standard that is more stringent i.e., from stabilization to "no land disposal" (after August 8, 1990).

Today's rule is not promulgating the proposed treatment standard of "no land disposal" for K061 wastewaters. The basis of the wastewater standard was the premise that K061 was not anticipated to be generated. Several commenters provided information to the contrary indicating that K061 wastewaters are being generated and will continue to be generated. Several facilities indicated that their K061 nonwastewaters are generated as wet sludges rather than as dry baghouse dust. The water from treating and/or dewatering these sludges are classified as K061 wastewaters. In addition, the majority of the volume of K061 nonwastewaters has been historically disposed in landfills. The aqueous leachate collected from these landfills are "derived-from" K061 wastewaters. Commenters have also identified additional specific sources of wastewater forms of K061 such as those being generated at a CERCLA site, during a corrective action at a RCRA facility, as a leachate from a landfill, and as a residual from treatment processes such as dewatering. Since generation of K061 wastewaters does occur, the premise of no generation as a basis for the treatment standard of "no land disposal" is invalid. Therefore, the Agency cannot promulgate the proposed standard of "no land disposal" for K061 wastewaters as final. Since no standard is established for K061 wastewaters, this subgroup of wastes is restricted from land disposal according to the "soft hammer" provisions. EPA intends to develop and propose numerical treatment standards by May 8, 1990. [Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to

include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K061 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

EPA solicited comment in the April 8, 1988, notice on the issue of whether commercial fertilizers that contain K061 dust as an ingredient should be required to meet BDAT as a condition of remaining exempt from the remaining RCRA standards when they are applied to the land. See 40 CFR § 266.20. After considering the public comment on this issue, EPA has decided not to amend the existing exemption at this time. Our reasons are the following: (1) Existing data appear to indicate that application of these fertilizers to the crops to which zinc-based fertilizers are applied does not pose significant risk from either a food chain contamination pathway or a groundwater contamination pathway; and (2) Constituent levels (and levels of extractable metals) of some of the toxic metals in zinc-based fertilizers are virtually the same, whether or not the fertilizers contain K061; levels of the remaining constituent (lead) are more variable, although some of the non K061 fertilizers (i.e., those fertilizers whose zinc comes from a non-waste source) contain more lead than any K061 fertilizer for which EPA has data. It thus is possible (although further study and data-gathering are required) that EPA could ultimately classify K061 based fertilizers as products rather than wastes.

It thus does not appear to the Agency to be the proper time to remove the existing exemption for these fertilizers. Because there has been no opportunity for notice and comment, and because of incomplete data, it also would not be proper to reclassify these fertilizers at this time. Accordingly, EPA is not taking action at this time, and so is leaving in place the exemption for zinc-containing fertilizers that include K061 wastes as ingredients.

A number of commenters (although none from the fertilizer industry) maintained that hazardous waste-

derived fertilizers are not subject to RCRA at all, because the hazardous waste are not "discarded materials", and so are not solid wastes. They cited *American Mining Congress v. EPA*, 824 F.2d 1177 (D.C. Cir. 1987) for this proposition. EPA does not agree. The Agency views the practice as discarding for several reasons: (1) recycling involving direct placement of hazardous secondary materials on the land for final disposition is discarding because it is like land disposal, (2) unwanted contaminants in the hazardous secondary materials (for example, lead and cadmium in K061) which in no way contribute to recycling are being gotten rid of and in fact being disposed of. (Should it prove that lead and cadmium are present in hazardous waste and nonhazardous waste-derived zinc fertilizers at similar concentrations, this last point would no longer apply.) This use constituting disposal situation also does not involve the type of ongoing industrial process discussed by the court in the above-cited case. The Agency moreover finds these commenters' arguments unpersuasive given that they would make legal under RCRA such infamous use constituting disposal situations as Times Beach, Missouri (use of hazardous distillation bottom as dust suppressants). The Agency is convinced that neither Congress nor the court contemplated any such results.

INTERIM TREATMENT STANDARDS FOR K061

[Nonwastewaters]

[High Zinc Subcategory—Equal to or Greater than 15%]

[Effective until August 8, 1990]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cadmium.....	(¹)	0.14
Chromium (Total).....	(¹)	5.2
Lead.....	(¹)	0.24
Nickel.....	(¹)	0.32

¹ Not applicable.

TREATMENT STANDARDS FOR K061

[Nonwastewaters]

[High Zinc Subcategory—Greater than 15%]

[Effective after August 8, 1990]

NO LAND DISPOSAL BASED ON RECYCLING

BDAT TREATMENT STANDARDS FOR K061

[Nonwastewaters]

[Low Zinc Subcategory—Less than 15%]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cadmium.....	(¹)	0.14
Chromium (Total).....	(¹)	5.2
Lead.....	(¹)	0.24
Nickel.....	(¹)	0.32

¹ Not applicable.

m. K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332). Today's rule promulgates final treatment standards for K062 wastewaters and nonwastewaters as proposed. As initially generated, K062 spent pickle liquors contain less than 1% filterable solids and are classified as K062 wastewaters. Treatment standards for both K062 wastewaters and nonwastewaters were established based on the performance of chromium reduction followed by chemical precipitation with sulfide followed by precipitation, settling, filtering and dewatering of the solid residues. The standards for K062 wastewaters are based on the concentrations of metals in the wastewater residual from this process. The standards for K062 nonwastewaters are based on the analysis of TCLP leachates of the dewatered solid residues.

The standards shown below apply to all K062 wastewaters and nonwastewaters with the exception of residues generated as a result of lime (Ca(OH)₂) treatment that are not classified as hazardous wastes according to 40 CFR 261.3(c)(2)(ii) unless they are hazardous because they exhibit a characteristic. Therefore, any such residues would not have to comply with the BDAT treatment standards. The treatment standards do apply, however, to residues generated by other than lime precipitation.

A comment received on the August 12, 1987 Notice of Data Availability and Request for Comments (52 FR 29992) suggested that K062 nonwastewaters can be treated by high temperature metals recovery (HTMR). At this time, the applicability of HTMR to all K062 nonwastewaters has not been sufficiently verified in order to develop additional treatment standards. The

concentrations and identity of metals in K062 wastewaters vary widely depending on the specific steel being pickled. EPA has not been able to define any particular subcategories of K062 nonwastewaters that would be amenable to a particular recovery process.

Commenters also stated that since EPA is requiring the use of sulfide as a precipitant for K062 wastewaters, various recovery processes that are designed to recover metals from metal hydroxide precipitates would be precluded from use. This is not the case, for EPA is not requiring the use of sulfide, but rather establishing a performance standard for the K062 wastes. These standards do not exclude the use of lime as a precipitant. In fact, the Agency has information that the majority of generators are indeed using lime as a precipitant. These lime residues can already be sent to HTMR without meeting the standards for K062 nonwastewaters.

One commenter stated that EPA should alter the regulatory provision (§ 261.3(c)(2)(ii)) that excludes lime precipitated K062 nonwastewaters from the derived from rule. They stated that if sulfide precipitation can achieve a higher water quality, then it should be BDAT for all K062 wastewaters. The Agency cannot remove this exemption without following rulemaking procedures, and did not propose the change.

One commenter stated that since aqueous metal recovery processes for metal contaminated wastewaters exist and are being used, EPA should force K062 wastewaters to use them by establishing a treatment standard of "no land disposal" for K062. At this time, the applicability of these recovery processes to K062 wastewaters has not been sufficiently verified in order to establish a "no land disposal" standard. The high acid content and high variability in concentrations and identity of metals in these wastewaters may preclude the use of some technologies such as reverse osmosis and cation exchange due to the strong possibility that the acid or other metals could foul the recovery process. Thus, the Agency believes that a standard of "no land disposal" may eventually be possible to promulgate for certain subcategories of K062. However, it is unlikely that this standard would be justified for all K062 wastes. At this time, EPA has not been able to define any particular subcategories of K062 wastewaters that would be amenable to a particular aqueous recovery process.

Several commenters argued that EPA should not regulate copper because it is not a hazardous constituent specifically listed on Appendix VIII of 40 CFR Part 261. EPA has decided not to regulate copper here for the reasons stated earlier in connection with F006 wastes.

BDAT TREATMENT STANDARDS FOR K062

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Chromium (total).....	(¹)	0.094
Lead	(¹)	.37

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K062

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Chromium (total).....	0.32	(¹)
Lead .....	.04	(¹)
Nickel .....	.44	(¹)

¹ Not applicable.

n. K069—Emission control dust/sludge from secondary lead smelting. The BDAT treatment standard of "no land disposal" for K069 wastewaters and nonwastewaters was proposed based on information supplied to the Agency that indicated that K069 wastes were totally recyclable without generation of residuals. In response to this premise, one commenter provided information that they generate a K069 nonwastewater that cannot be directly recycled due to a significantly different chemical composition. The information also indicates, that, while the waste being generated meets the definition of the listed waste K069, there also is a significant difference in how it is being generated.

Most K069 wastes are baghouse dusts and scrubber sludges that act as primary air pollution control devices (APCD). The commenter's facility utilizes a baghouse for particulate collection as its primary APCD. In addition, the air leaving the baghouse is sent through a "secondary" APCD, consisting of a wet venturi scrubber utilizing lime neutralization. This "secondary" APCD has been installed primarily to reduce sulfur dioxide emissions. The sludge from this process is technically the listed waste, K069, but consists

primarily of lead contaminated calcium sulfate and calcium hydroxide rather than metallic lead, lead oxides, and metal oxides that comprise typical baghouse dusts. In addition, the facility stated that it has experimented with other neutralizing agents to produce a reclaimable sludge, but has not succeeded. At the time of this rule, the Agency has not completed its analysis of all of this information. However, it does believe that these K069 wastes are fundamentally different and that the basis of total recycling for the proposed standard of "no land disposal" for K069 wastes is not justifiably extrapolated to these types of K069 wastes.

For the purposes of this rule, the Agency is establishing a Calcium Sulfate Subcategory and a Non Calcium Sulfate Subcategory for K069 nonwastewaters. The Calcium Sulfate Subcategory is defined as those emission control sludges from secondary lead smelting that are generated as calcium sulfate from secondary wet scrubbers using lime neutralization. The Non Calcium Sulfate Subcategory is defined as those emission control sludges from secondary lead smelting that are not generated as calcium sulfate from secondary wet scrubbers using lime neutralization. It is important to point out that this definition specifically includes "secondary" wet scrubbers. The Agency also recognizes that K069 may be generated as a wet scrubber sludge from other primary APCDs and that the primary APCD may incorporate lime neutralization. Because no comments were received from generators of K069 from these type of primary APCDs, the Agency assumes that the generators agree with EPA's assessment of recyclability of these wastes. As a result, the Agency has decided to promulgate a final BDAT treatment standard of "no land disposal" based on total recycling for those K069 nonwastewaters in the Non Calcium Sulfate Subcategory. EPA intends to propose and promulgate numerical treatment standards for K069 nonwastewaters in the Calcium Sulfate Subcategory (i.e., those from secondary wet scrubbers using lime neutralization) prior to May 8, 1990.

Commenters have also identified additional specific sources of wastewater forms of K069 such as those being generated at a CERCLA site, during a corrective action at a RCRA facility, and as a leachate from a landfill. In the proposed rule, EPA had based a "no land disposal" standard for the wastewaters on the belief that the total recycling process generated no

wastewater residuals and that it was unlikely that other wastewater forms of K069 would be produced. Since generation of does occur, the premise of no generation as the basis for the standard appears to be unjustified. As a result, the Agency is therefore unable to promulgate a treatment standard for these wastewaters in today's rule. EPA does intend to propose and promulgate numerical treatment standards for these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule for these K069 wastewaters, they are restricted from land disposal according to the "soft hammer" provisions.

[Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K069 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33 (f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR K069

[Nonwastewaters]

[Non Calcium Sulfate Subcategory]

NO LAND DISPOSAL BASED ON RECYCLING

o. K071—Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used. Today's rule promulgates final treatment standards for K071 wastewaters and nonwastewaters. Analysis of a TCLP leachate for mercury is necessary to establish compliance with the treatment standard for K071 nonwastewaters. For K071 wastewaters, a total waste analysis for mercury is necessary to establish compliance with the standard. These standards are listed in the table at the end of this section.

The treatment standard for the K071 nonwastewaters was established based on the performance of a treatment process that includes a series of individual steps. The main purpose of which is to solubilize the mercury in the K071 brine sludge and later convert the mercury to a relatively insoluble mercury sulfide sludge. Mercury sulfide

is one of the least soluble forms of mercury salts. Initially, the K071 brine sludge is leached with acid to solubilize certain forms of mercury. The sludge and acid leachate are mixed with an alkaline hypochlorite to oxidize the mercury to a highly soluble mercuric chloride (this also raises the pH). The resultant sludge is then washed with hydrochloric acid and water during a filtration step. The treatment standard for K071 nonwastewaters is based on the leachability of mercury from this filter cake. The filtrate contains the solubilized mercury, which is then precipitated out as a mercury sulfide sludge. This sulfide sludge is also filtered and/or dewatered. The aqueous residual from this process is classified as a K071 wastewater and must meet the treatment standard for mercury in K071 wastewaters. The sulfide sludge is classified as a K071 nonwastewater, unless the liquids were combined with other wastewaters from the mercury cell process prior to treatment. If so, it is a wastewater treatment residual listed specifically as K106. The Agency has data that indicate that this sulfide sludge (be it K071 or K106) will meet the treatment standard for K071 nonwastewaters, that was derived from the leachability of residual mercury in the leached brine sludge.

One commenter provided data on a specialized stabilization process for K071 brine sludges as they are initially generated (without acid or water washing). These data were generated from bench scale operations. The Agency has not determined whether this process has been demonstrated, as yet, on a full scale basis. The Agency is still in the process of examining the stabilization data for K071 nonwastewaters (as a process in lieu of acid leaching) that was submitted. EPA will determine if these data demonstrate sufficient treatment to be proposed as an alternative to acid leaching. At the time of this rule, EPA has insufficient information to establish direct stabilization as a demonstrated treatment alternative to the acid leaching procedure previously described.

Extensive EP leachate data were submitted to EPA by three facilities using only a water washing followed by a dewatering process. One of the three facilities supplied TCLP mercury concentrations for the treated K071. EPA considered, but did not use, any of these data points in the development of the treatment standards because the analysis of variance tests showed significantly better treatment was achieved by the acid leaching

procedure. However, EPA would like to emphasize that other treatment technologies such as stabilization or water washing are not precluded from use by today's rule, provided that these technologies or combination of technologies can achieve the equivalent performance as measured by the treatment standards promulgated as final in today's rule.

Several commenters also stated that EPA wrongly considered the information indicating that the TCLP is a better measure of evaluating BDAT performance than the EP (Extraction Procedure). Data were submitted comparing EP data to TCLP data in both treated and untreated K071 wastes. Statistical analyses, performed by EPA, show that the EP and the TCLP procedures yield statistically similar results on the leachability of mercury in K071 wastes. Based on industry's willingness to accept a TCLP standard based on EP data and EPA analysis indicating a statistical relationship between the respective extraction methods for K071 wastes, the Agency has incorporated the additional EP data into its calculation of the final treatment standard for K071 nonwastewaters. However, the Agency maintains its position that, in general, the TCLP is a better measure of evaluating BDAT than the EP, except where data such as these exist for tests performed on the same treated waste.

Several commenters stated that a total mercury analysis is an inappropriate measure of performance for K071 nonwastewaters, since the BDAT treatment system is not designed as a complete recovery system (i.e., mercury is not being recovered directly, but rather it is being converted to recoverable mercury sulfides). At the time of the proposal, the Agency was developing a standard for K106 (wastewater treatment residues that are primarily mercury sulfides) based on recovery of the mercury by retorting of K106 wastes. EPA had determined that the mercury sulfide residues from treatment of K071 wastes were either the listed waste K106 or were similar enough to K106 wastes that they could be retorted for mercury recovery. EPA received extensive comments from industry opposing the applicability, demonstrability, and economics of retorting K106. At the same time, EPA has examined the data on the treatment of K106 and determined that there was insufficient data to support the promulgation of the proposed treatment standards based on retorting. See discussion of K106 wastes in section III.A.7.w. of this preamble. Since

recovery of K071 mercury sulfide residues was based on the establishment of retorting as BDAT for K106 and since the Agency has decided not to promulgate the standards for K106 at this time, EPA has decided to promulgate the treatment standard for K071 nonwastewaters only on the analysis of the TCLP leachate and not on a total mercury analysis. [Note: As previously stated, EPA prefers to establish treatment standards based on total metal analysis only when recovery is established as BDAT.] However, the Agency is not precluded from adding this requirement in the future, if a treatment standard based on retorting or some other recovery process is promulgated for K106 wastes.

BDAT TREATMENT STANDARDS FOR K071

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Mercury.....	(¹)	0.025

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K071

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Mercury.....	0.030	(¹)

¹ Not applicable.

p. K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production. The BDAT treatment standard of "no land disposal" for K073 wastewaters and nonwastewaters was proposed based on the premise of "no generation". In the proposed rule, EPA specifically requested comment on this premise. In response, several commenters stated that at least one facility is generating K073 wastes. Since generation has been identified, the Agency is not able to promulgate a final treatment standard of "no land disposal" for any K073 wastes.

Additional information provided by one commenter indicates that at least one facility is incinerating its K073 wastes onsite and that this facility intends to cease the generation of K073 in the near future. Based on these comments, EPA now intends to pursue the development of BDAT treatment standards for K073. In particular, EPA

will evaluate the performance of incineration on K073 provided that this facility intends to continue to generate K073 past May 8, 1990. If this facility ceases generation and no other generating facilities can be identified, EPA may decide to promulgate the proposed "no land disposal" treatment standard prior to May 8, 1990. However, since no standard is promulgated in today's rule for K073 wastes, these wastes are restricted from land disposal according to the "soft hammer" provisions. [Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K073 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

It is also important to note that, until standards for all K073 wastes are promulgated, those K073 wastes containing halogenated organics may only be land disposed as long as they do not exceed a total halogenated organic concentration of 1000 ppm established in the July 8, 1987 promulgated restrictions for "California List" wastes.

q. K083—Distillation bottoms from aniline production. The BDAT treatment standard of "no land disposal" for K083 wastewaters and nonwastewaters was proposed based on the performance of a liquid injection incinerator that generated no residuals. The K083 nonwastewater examined by EPA, contained no measurable ash content (solid residues from incineration) at a detection limit of 0.01% by weight. The liquid incineration unit that EPA visited, did not have a vent scrubber or other pollution control device and did not generate any scrubber water. This information was the basis of the "no land disposal" standard for K083.

In the proposed rule, EPA specifically requested comment on the premise of the "no land disposal" standards for both categories of K083 wastes. In response, several commenters stated that they do generate K083 nonwastewaters with detectable levels of ash and K083 wastewaters as scrubber waters. Since generation of

these wastes has been identified, the premises of "no ash" and "no generation" may be unjustified for all K083 wastes.

As a result, the Agency has decided to promulgate a final rule of "no land disposal" only for one subcategory of K083 nonwastewaters. This subcategory is identified as the No Ash Subcategory and is defined as those K083 nonwastewaters with less than 0.01% by weight ash.

The use of other treatment technologies are not precluded by this rule. For example, while rotary kiln and fluidized bed incinerators are generally designed to handle solids and sludges, these units often are designed to incinerate liquids. In any case where these or other treatment technologies can treat K083 without generating an ash or other solid residual, these units may be used to achieve the "no land disposal" standard for the K083 nonwastewaters.

EPA does intend to investigate the comments submitted and, if necessary, propose and promulgate numerical treatment standards for K083 nonwastewaters with detectable ash content and K083 wastewaters prior to May 8, 1990. Since no standard is promulgated in today's rule for these K083 wastes, they are restricted from land disposal according to the "soft hammer" provisions. [Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K083 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR K083

[Nonwastewaters]

[No Ash Subcategory—Less than 0.01%]

NO LAND DISPOSAL BASED ON NO ASH

r. K086—Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from the cleaning of

tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead. In today's rule, EPA is promulgating final treatment standards for seventeen organic constituents and two metal constituents in wastewaters and nonwastewaters in the K086 Solvent Washes Subcategory. These are acetone, n-butyl alcohol, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, toluene, 1,1,1-trichloroethane, trichloroethylene, xylenes, bis (2-ethylhexyl) phthalate, cyclohexanone, 1,2-dichlorobenzene, naphthalene, nitrobenzene, total chromium, and lead. Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The final treatment standards for the wastewater and nonwastewater forms of K086 Solvent Washes are listed in the tables at the end of this section.

By definition K086 wastes can be from one of three major subcategories (depending on the material used for washing). These are: (1) Solvent Washes; (2) Solvent Sludges; and (3) Caustic/Water Washes and Sludges. For the purposes of this rule, the K086 Solvent Washes Subcategory is defined as those K086 wastes which are derived from procedures which have used any organic solvents including, but not limited to, the following: acetone, n-butyl alcohol, cyclohexanone, 1,2-dichlorobenzene, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, naphthalene, nitrobenzene, toluene, 1,1,1-trichloroethane, trichloroethylene, and/or xylenes. The Agency believes that these are the most typical solvents that become K086 Solvent Washes. While EPA is specifically identifying these sixteen solvents in order to clarify the definition of this subcategory, the Agency recognizes that other solvents may be used by generators. In these cases, EPA has not specifically developed treatment standards for that particular unlisted solvent. While no treatment standard for that solvent has been developed, the treatment standards for lead and total chromium do apply to these K086 Solvent Washes. It is also important to note that some of these solvents, including those that are specifically

listed in the definition of the Solvent Washes Subcategory, are specifically listed under the solvent waste codes F001, F002, F003, F004 and/or F005. In such cases, the treatment standards for these solvent wastes that were promulgated November 7, 1986, are already in effect. However, where two sets of standards exist for a constituent in a particular waste that has more than one applicable waste code, the more stringent standard is applicable for that constituent. For those constituents where standards are expressed as a total concentration and a TCLP concentration, both standards may apply.

The treatment standards for all of the organic constituents in the K086 wastewaters and nonwastewaters are based on the performance achieved by incineration. The treatment standards for total chromium and lead in K086 wastewaters are transferred from a similar wastewater treated at a facility previously sampled by the Agency. The wastewater treatment system included hexavalent chromium reduction to convert any hexavalent chromium to the trivalent state, chemical precipitation with excess lime to precipitate dissolved metals as solids, and filtration to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. These residues did not require further treatment because TCLP leachate concentrations were not found at treatable levels. Further details regarding BDAT development and data transfer are provided in the Background Document for this waste code.

For the purposes of BDAT, any solid ash residues from the incineration of nonwastewaters in the K086 Solvent Washes Subcategory are also classified as nonwastewaters. Scrubber waters from air pollution control devices are classified as wastewaters. Both of these residues must meet the BDAT treatment standards for the K086 Solvent Washes Subcategory prior to placement in land disposal units.

While EPA has identified incineration in units with liquid injection as BDAT for K086 Solvent Washes, other treatment technologies such as fluidized bed incineration, multiple hearth incineration, rotary kiln incineration, fuel substitution units, batch distillation and fractional distillation that can achieve these standards are not precluded from use by this rule.

The Agency has data that suggests that approximately sixteen different

BDAT List solvents could be used to clean ink formulating equipment. EPA is concerned that regulation of only the solvents that were found in the tested waste matrix would create an incentive to simply switch to the use of other solvents. For this reason, EPA is regulating all sixteen BDAT List solvents. EPA transferred the performance data achieved for some of these sixteen solvents from performance data for other solvents that had similar physical and chemical properties. The Agency believes that the solvents that have been determined to be similar, can be incinerated to the same treatment concentrations. Details on the transfer of standards can be found in the BDAT Background Document for this waste code. EPA specifically solicited comments on this transfer of performance data. Commenters objected to the transfer of many of these constituents. However, they did not provide sufficient data documenting that the proposed BDAT treatment standards are not achievable. EPA specifically requested that documentation be provided in order for the Agency to consider potential changes in the standards. As a result, today's rule promulgates final treatment standards as proposed.

Today's rule is not promulgating final treatment standards for K086 wastes in the Solvent Sludges Subcategory or the Caustic/Water Washes and Sludges Subcategory. Since no standard is established, these subcategories of K086 wastes are restricted from land disposal according to the "soft hammer" provisions. EPA intends to develop and propose numerical treatment standards by May 8, 1990. [Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K086 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in non-minimum technology units—although the requirements of section 3005(j) apply after November 8, 1988—and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR K086

[Nonwastewaters]

[Solvent Washes Subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acetone.....	0.37	(¹)
bis(2-ethylhexyl)phthalate..	.49	(¹)
n-Butyl alcohol.....	.37	(¹)
Cyclohexanone.....	.49	(¹)
1,2-Dichlorobenzene.....	.49	(¹)
Ethyl acetate.....	.37	(¹)
Ethyl benzene.....	.031	(¹)
Methanol.....	.37	(¹)
Methylene chloride.....	.037	(¹)
Methyl ethyl ketone.....	.37	(¹)
Methyl isobutyl ketone.....	.37	(¹)
Naphthalene.....	.49	(¹)
Nitrobenzene.....	.49	(¹)
Toluene.....	.031	(¹)
1,1,1-Trichloroethane.....	.044	(¹)
Trichloroethylene.....	.031	(¹)
Xylenes.....	.015	(¹)
Chromium (total).....	(¹)	0.094
Lead.....	(¹)	.37

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K086

[Wastewaters]

[Solvent Washes Subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acetone.....	0.015	(¹)
bis(2-ethylhexyl)phthalate..	.044	(¹)
n-Butyl alcohol.....	.031	(¹)
Cyclohexanone.....	.022	(¹)
1,2 Dichlorobenzene.....	.044	(¹)
Ethyl acetate.....	.031	(¹)
Ethyl benzene.....	.015	(¹)
Methanol.....	.031	(¹)
Methylene chloride.....	.031	(¹)
Methyl ethyl ketone.....	.031	(¹)
Methyl isobutyl ketone.....	.031	(¹)
Naphthalene.....	.044	(¹)
Nitrobenzene.....	.044	(¹)
Toluene.....	.029	(¹)
1,1,1-Trichloroethane.....	.031	(¹)
Trichloroethylene.....	.029	(¹)
Xylenes.....	.015	(¹)
Chromium (total).....	.32	(¹)
Lead.....	.037	(¹)

¹ Not applicable.

s. K087—Decanter tank tar sludge from coking operations. In today's rule, EPA is promulgating final treatment standards for nine organic constituents and one metal constituent in K087 wastewaters and nonwastewaters. These are acenaphthalene, benzene, chrysene, fluoranthene, indeno (1,2,3-cd) pyrene, naphthalene, phenanthrene, toluene, xylenes, and lead. Treatment

standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The final treatment standards for K087 wastewaters and nonwastewaters are listed in the tables at the end of this section.

The treatment standards for all of the organic constituents in the K087 wastewaters and nonwastewaters are based on the performance achieved by incineration in a rotary kiln. The treatment standards for lead in K087 wastewaters are transferred from a similar wastewater treated at a facility previously sampled by the Agency. The wastewater treatment system included hexavalent chromium reduction to convert any hexavalent chromium to the trivalent state, chemical precipitation with excess lime to precipitate dissolved metals as solids, and filtration to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. Further application of a stabilization process to these solids may be necessary in order to conform with the BDAT treatment standards for K087 nonwastewaters. Further details regarding BDAT development and data transfer are provided in the Background Document for this waste code.

Several commenters stated that EPA should not regulate acenaphthalene, phenanthrene, xylenes or zinc because they are not constituents specifically listed on Appendix VII or Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, in that coal tars, zinc cyanide and zinc phosphide are listed on Appendix VIII. One of the reasons that EPA considers coal tars hazardous is the presence of significant concentrations of polynuclear aromatic hydrocarbons such as acenaphthalene and phenanthrene. Xylenes have also been identified in abundance in coal tars. Further, zinc is an aquatic toxin, and the Agency considered adding it to Appendix VIII for that reason. However, in this rulemaking the Agency is only regulating zinc when it is an indicator of performance of treatment for other Appendix VIII constituents. Further, the Agency believes that zinc is controlled by treatment of lead, which is regulated by today's rule. Therefore, EPA is not promulgating final standards for zinc as part of the treatment standards for K087

wastes, but is promulgating final standards for acenaphthalene, phenanthrene and xylenes.

For the purposes of BDAT, any solid ash residues from the incineration of K087 nonwastewaters are also classified as nonwastewaters. Scrubber waters from air pollution control devices are classified as wastewaters. Both of these residues must meet the treatment standards for the K087 prior to placement in land disposal units.

While EPA has identified incineration in a rotary kiln as BDAT for K087 nonwastewaters, other treatment technologies such as fluidized bed incineration, multiple hearth incineration, rotary kiln incineration, and various fuel substitution units that can achieve these standards are not precluded from use by this rule.

Total recycling has been identified as a potentially applicable technology for K087 wastes. Total recycling involves treating the K087 waste for (1) reuse in the coke ovens or (2) production of a commercial tar product. At this time, however, EPA has not completed its analysis of data submitted for purposes of defining which K087 materials can be beneficially recycled. Industry commenters likewise agreed that not every K087 waste is amenable to recycling (although suggesting that most K087 as generated is recyclable).

BDAT TREATMENT STANDARD FOR K087

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acenaphthalene.....	3.4	(¹)
Benzene.....	0.071	(¹)
Chrysene.....	3.4	(¹)
Fluoranthene.....	3.4	(¹)
Indeno (1,2,3-cd) pyrene.....	3.4	(¹)
Naphthalene.....	3.4	(¹)
Phenanthrene.....	3.4	(¹)
Toluene.....	0.65	(¹)
Xylenes.....	0.070	(¹)
Lead.....	(¹)	0.51

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K087

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acenaphthalene.....	0.028	(¹)
Benzene.....	.014	(¹)
Chrysene.....	.028	(¹)
Fluoranthene.....	.028	(¹)

BDAT TREATMENT STANDARDS FOR
K087—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Indeno (1,2,3-cd) pyrene	.028	(¹)
Naphthalene	.028	(¹)
Phenanthrene	.028	(¹)
Toluene	.008	(¹)
Xylenes	.014	(¹)
Lead	.037	(¹)

¹ Not applicable.

t. K099—Untreated wastewater from the production of 2,4-dichlorophenoxyacetic acid (2,4-D). Today's rule promulgates final treatment standards for K099 wastewaters and nonwastewaters. These standards are based on chemical oxidation using chlorine. This treatment system shows substantial treatment for 2,4-dichlorophenoxyacetic acid (2,4-D). The treatment standards for wastes identified as K099 are listed in the tables at the end of this section.

Other treatment technologies that the Agency believes are applicable are chemical oxidation using other oxidizers, wet air oxidation (a specialized form of chemical oxidation), carbon adsorption followed by incineration of the carbon, and biological treatment followed by incineration of the biological sludge. These and any other technology that can achieve these standards are not precluded from use by this rule.

For wastes and treatment residues identified as K099 nonwastewaters or wastewaters, EPA is promulgating treatment standards for seven organic constituents. These are 2,4-dichlorophenoxyacetic acid and six chlorinated dioxins and chlorinated dibenzofurans. The 1 ppb analytical quantitation limit for these constituents described in the final rule for dioxin containing wastes (51 FR 40643) is also used here. This level represents the analytical limit of quantitation that can be routinely achieved.

EPA specifically requested comment on the selection of chlorine oxidation as BDAT for K099. Chlorine oxidation was selected as the treatment technology for the destruction of 2,4-dichlorophenoxyacetic acid. The data indicate that this technology provides significant reduction of this chemical. However, the data appear to indicate a

slight increase in the concentration of some of the chlorinated dioxins and dibenzofurans (all values below the routine quantitation limit of 1 part per billion) from the untreated waste to the treated residuals. At this time, EPA is not certain that this implies that the chlorine oxidation process is responsible for this slight increase. The Agency specifically requested comments and data that would indicate the existence of an alternative treatment technology that could achieve the same performance for the 2,4-dichlorophenoxyacetic acid without an increase in the chlorinated dioxins and dibenzofurans. Because no comments were received on alternative treatment technologies, EPA assumes that the commenters agree with EPA's assessment that chlorine oxidation represents BDAT for K099 wastes.

The Agency received a late comment that included additional data on the performance of chlorine oxidation on K099 wastes. This data, along with the data originally presented in the K099 background document for the proposed rule, was reexamined by the Agency. These additional data indicated that the proposed treatment standard for 2,4-dichlorophenoxyacetic acid could not be achieved on a routine basis. Sufficient data were submitted enabling the Agency to calculate a revised treatment standard for this constituent. Therefore, the Agency is promulgating the revised 2,4-dichlorophenoxyacetic acid standard as final along with the standards for the chlorinated dioxins and dibenzofurans are proposed.

BDAT TREATMENT STANDARDS FOR K099

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
2,4-Dichlorophenoxyacetic acid	1.0	(¹)
Hexachlorodibenzo-p-dioxins	.001	(¹)
Hexachlorodibenzofurans	.001	(¹)
Pentachlorodibenzo-p-dioxins	.001	(¹)
Pentachlorodibenzofurans	.001	(¹)
Tetrachlorodibenzo-p-dioxins	.001	(¹)
Tetrachlorodibenzofurans	.001	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K099

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
2,4-Dichlorophenoxyacetic acid	1.0	(¹)
Hexachlorodibenzo-p-dioxins	.001	(¹)
Hexachlorodibenzofurans	.001	(¹)
Pentachlorodibenzo-p-dioxins	.001	(¹)
Pentachlorodibenzofurans	.001	(¹)
Tetrachlorodibenzo-p-dioxins	.001	(¹)
Tetrachlorodibenzofurans	.001	(¹)

¹ Not applicable.

u. K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. In today's rule, EPA is promulgating final treatment standards for K101 and K102 wastewaters and nonwastewaters. These include ortho-nitroaniline in K101 wastes and ortho-nitrophenol in K102 wastes as well as arsenic, cadmium, total chromium, lead, mercury and nickel. The final treatment standards for these wastes are listed in the tables at the end of this section.

The BDAT treatment standards for K101 and K102 nonwastewaters were proposed based on information supplied to the Agency that indicated that untreated K101 and K102 wastes contain 590 ppm to 0.83% of arsenic. In a late comment to the proposed rule, one commenter provided information that they generate K101 and K102 nonwastewaters that contain significantly higher concentrations of arsenic (up to 26.9% total arsenic). The commenter also stated that incineration of their wastes poses a significant increase in risk due to these high concentrations of arsenic. The Agency agrees with the commenter that these K101 and K102 wastes contain a significantly higher concentration of arsenic compared to those wastes studied by the Agency (i.e., the wastes that were used to develop the treatment standards). The Agency also agrees that direct incineration of organic wastes containing very high levels of arsenic,

such as the K101 and K102 wastes generated by the commenter, poses a significant increase in risk to human health and the environment. As a result, the Agency is therefore, unable to promulgate the proposed treatment standards as final for K101 and K102 wastes with high arsenic concentrations.

For the purpose of today's rule, the Agency is therefore establishing a High Arsenic Subcategory and a Low Arsenic Subcategory for K101 and K102 nonwastewaters. The High Arsenic Subcategory is defined as those K101 and K102 wastes that contain greater than or equal to 1% total arsenic. The Low Arsenic Subcategory is defined as those K101 and K102 wastes that contains less than 1% total arsenic. This level was established based primarily on the concentration of arsenic (0.83%) measured in the waste tested by EPA. A complete explanation of how this level was determined can be found in the background document for this waste. EPA intends to propose and promulgate numerical treatment standards for K101 and K102 wastes in the High Arsenic Subcategory prior to May 8, 1990. Since no standard is promulgated in today's rule for K101 and K102 nonwastewaters in this subcategory, they are restricted from land disposal according to the "soft hammer" provisions.

Potential technologies applicable to organic wastes containing high concentrations of arsenic, such as K101 and K102 wastes in the High Arsenic Subcategory, are chemical oxidation or wet air oxidation. These technologies destroy interfering organics and convert the organic arsenicals to inorganic forms of arsenic. The inorganic forms of arsenic may then be amenable for direct recovery or may be immobilized by specialized stabilization techniques.

The treatment standards for the organic constituents in K101 and K102 nonwastewaters in the Low Arsenic Subcategory are based on the performance achieved by incineration in a rotary kiln. The treatment standards for the metals are transferred from wastewater metals treatment data for similar wastes that have been previously developed by the Agency. The wastewater treatment system includes a chemical precipitation step to precipitate dissolved metals as solids followed by a filtration step to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. Further application of a stabilization process to these solids may be necessary in order to conform with the BDAT treatment

standards for nonwastewaters. Further details regarding BDAT development and data transfer are provided in the Background Document for this waste code.

For the purposes of BDAT, any solid ash residues from the incineration of K101 and K102 nonwastewaters in the Low Arsenic Subcategory are also classified as nonwastewaters. Scrubber waters from air pollution control devices are classified as wastewaters. Both of these residues must meet the treatment standards prior to placement in land disposal units.

While EPA has identified incineration in a rotary kiln as BDAT for K101 and K102 nonwastewaters in the Low Arsenic Subcategory, other treatment technologies such as fluidized bed incineration, multiple hearth incineration, and rotary kiln incineration that can achieve these standards are not precluded from use by this rule.

For wastes identified as K101 and K102 nonwastewaters in the Low Arsenic Subcategory, EPA is regulating two specific organic constituents that are not included on the BDAT List but have been selected as indicators of effective treatment of these wastes. A standard for ortho-nitroaniline is promulgated for K101 and a standard for ortho-nitrophenol is promulgated for K102.

Several commenters stated that EPA should not regulate copper or zinc because it is not a constituent specifically listed on Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, but is not adopting a standard for reasons stated in previous sections of this preamble for F006 wastes.

At the time of this rule, the Agency had not completed its evaluation of waste characterization and treatment information for antimony, arsenic and barium in K101 and K102 nonwastewaters from the Low Arsenic Subcategory or antimony in any K101 and K102 wastewaters. The proposed rule contained the notation "reserved" for these constituents, noting that EPA would be setting standards when the evaluation was completed. Several commenters suggested that a treatment standard of "reserved" was confusing to the regulated community and unnecessary. Since individual standards would still have to be proposed and promulgated through the normal rulemaking procedures, no benefit is achieved by the "reserved" notation for these constituents. Therefore, the Agency has dropped it from the final rule for the individual constituents noted above.

BDAT TREATMENT STANDARDS FOR K101

[Nonwastewaters]

[Low Arsenic Subcategory—less than 1% total arsenic]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Ortho-nitroaniline	14	(¹)
Cadmium	(¹)	0.066
Chromium (total)	(¹)	5.2
Lead	(¹)	.51
Nickel	(¹)	.32

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K101

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Ortho-nitroaniline	0.27	(¹)
Arsenic	2.0	(¹)
Cadmium .....	.24	(¹)
Lead .....	.11	(¹)
Mercury .....	.027	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K102

[Nonwastewaters]

[Low Arsenic Subcategory—less than 1% total arsenic]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Ortho-nitrophenol	13	(¹)
Cadmium	(¹)	0.066
Chromium (total)	(¹)	5.2
Lead	(¹)	.51
Nickel	(¹)	.32

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K102

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Ortho-nitrophenol	0.028	(¹)
Arsenic	2.0	(¹)
Cadmium .....	.24	(¹)
Lead .....	.11	(¹)
Mercury .....	.027	(¹)

¹ Not applicable.

v. K103—Process residues from aniline extraction from the production of aniline. K104—Combined wastewater

streams generated from nitrobenzene/aniline production. In today's rule, EPA is promulgating final treatment standards for K103 and K104 wastewaters and nonwastewaters. These include total concentration standards for aniline, benzene, 2,4 dinitrophenol, nitrobenzene and phenol for both K103 and K104 wastes. Final treatment standards for total cyanides are promulgated only for K104 wastewaters and nonwastewaters. The final treatment standards for these wastes are listed in the tables at the end of this section.

The treatment standards for the organic constituents in K103 and K104 wastewaters and nonwastewaters are based on the performance achieved by solvent extraction followed by steam stripping and activated carbon adsorption with incineration of the solvent stream from extraction. Other treatment technologies such as steam stripping followed by activated carbon adsorption, and steam stripping followed by biological treatment are not precluded from use by this rule.

The solvent-containing stream from solvent extraction potentially can be recycled to recover nitrobenzene and aniline, or incinerated. The steam stripper overheads are condensed and decanted with the organic constituents recycled back to the process. The spent carbon from the activated carbon adsorption column is sent off-site for thermal regeneration. While the incineration component of this technology is not demonstrated for K103 and K104, available information shows that it is demonstrated on wastes similar to the contaminated solvent stream from extraction.

Because the solvent-contaminated stream potentially contains a significant amount of an explosive compound (picric acid), EPA expressed concern in the proposed rule that it may not be possible to safely use incineration. One commenter stated their belief that incineration could present significant safety hazards due to the presence of a significant amount of this explosive compound. The commenter stated that although it is possible that picric acid in solution may not present an explosion hazard, crystals of picric acid may be formed during upsets and malfunctions in the treatment system. The commenter pointed out that the crystals may accumulate over time even though the conditions for formation may not always be present and unless wetted with water will be shock sensitive and could explode with considerable force. Thus, the commenter believes that incineration is not a viable technology

for the K104 wastestream because of this potential for explosion.

EPA agrees that there is a potential for explosion if the combustion of these wastes is not properly controlled. However, incineration of these types of wastes is currently practiced. As such, incineration is fully demonstrated. EPA believes the issue of explosivity would be present for any technology used for this waste. Therefore, it is unreasonable to expect that EPA would exempt this or another waste from any treatment based on a mismanagement scenario. Instead, EPA expects that treatment facilities will take care to insure and provide design and operating conditions necessary in treating this waste to the concentrations promulgated in today's rule.

One commenter suggested that EPA incorrectly based the standards for K104 on a product processing step rather than a waste treatment technology. EPA defines BDAT for both K103 and K104 wastestreams as solvent extraction followed by steam-stripping and carbon adsorption. Objections to EPA's testing procedures were raised because the sampling occurred at a time when the plant was operating the process at conditions different from those now employed. The commenter contends that the solvent extraction procedure from which EPA obtained its BDAT data was actually a manufacturing process step that has been abandoned because of technical and economic infeasibility. The commenter objected to EPA's designation of the solvent extraction process as a waste treatment technology because at the point where the solvent extraction took place, neither the extract nor the residual streams were wastes. The commenter believes the solvent extraction procedure was an experimental processing step that occurred before the stream was identified for disposal. One commenter pointed out that EPA's determination of BDAT was improper based on the Agency's own statements regarding what constitutes "demonstrated" treatment technologies. The commenter noted that the Agency's final rule implementing land disposal restrictions for certain dioxin- and solvent-containing wastes (51 Federal Register 40571 et. seq.), EPA responded to commenters' concerns over use of experimental data, such as pilot and bench scale data to establish BDAT. The preamble to the regulation states that the Agency agrees with the commenters' position that its determinations should not be based on emerging and innovative technologies.

EPA believes that solvent extraction is a fully demonstrated technology. In fact, solvent extraction of organic constituents is used for treatment of hazardous wastes (see EPA's promulgated treatment standard for K048-K052 elsewhere in this notice) and widely used in the production of organic chemicals. Further, EPA frequently bases BDAT standards for individual wastes on the performance achieved by bench or pilot scale operation of demonstrated technologies when no full scale data are available. The commenter has provided no data to show that the performance achieved by a full scale solvent extraction system will not achieve the performance measured by EPA. However, EPA has established a variance procedure, if such data become available. In the interim, EPA believes that the proposed standards are achievable.

Use of solvent extraction does not require recycle of the extract back into the process. Instead, the extract can be incinerated to achieve the promulgated final standards. Recovery or reuse of the extract is not precluded by establishment of these standards. Selection of solvent extraction as part of the BDAT treatment process is based solely on its status as a demonstrated control technology that provides effective removal of constituents from the waste stream for subsequent destruction by incineration.

One commenter disagreed with the statistical methodology used in developing the treatment standards for K103 and K104 (the same methodology that is used for all of the BDAT treatment standards). Specifically, the commenter states that following good statistical practice, EPA should use a "multiplier" in the 99th percentile calculation that reflects the number of treatment data points used in the generation of the treatment standards. The 99th percentile used by EPA is as follows: $C_{99} = \exp(AVG + 2.33 \text{ Stand. Dev.})$. In place of the 2.33 multiplier, the commenter suggests that EPA should use a value that corresponds to the specific number of data points used. For K103 and K104 wastewaters, this value would be 7.042.

EPA does not agree with the commenter that the 2.33 value should be changed to a multiplier that corresponds to the specific number of data points. EPA's rationale is summarized as follows: The 2.33 multiplier is extensively used by EPA in its variability factor calculations, including the Agency's effluent guidelines limitations and the recently promulgated solvent rule. Under classical statistical

theory, the 2.33 value can be used in the 99th percentile calculation for any number of data points, provided the mean and standard deviation are known (i.e., that additional data points will not increase these values). It is EPA's position (supported, in general, by available data) that as the number of data points increase, the mean and standard deviation will most frequently decrease. Therefore, EPA believes that the use of the 2.33 multiplier is appropriate. As evidence to this determination, EPA points to the variability factors currently developed for the constituents in K103 and K104. These factors are in the range of approximately 1.6 to 15.4, which substantially exceeds the variability seen in treatment of wastewaters with a much larger number of data points.

Additionally, an engineering analysis of well-designed and well-operated treatment systems would, in general, predict that both the average level of performance and variability would decrease with larger data bases. While well designed and well operated treatment systems do experience fluctuations in performance, these fluctuations are normally cyclical reflecting the fact that an inherent part of most treatment system control devices is that they continuously undercompensate and overcompensate for a desired control parameter. As the data base for such cyclical changes increases, the standard deviation would decrease because the range of values would be essentially the same, while the number of data points would be greater. As a final point in response to this comment, the commenter also recognizes that the multiplier they suggest may be inappropriate because it yields results which "might simply be too high." [Additional discussion can be found in the Agency's Response to Comments document.]

BDAT TREATMENT STANDARDS FOR K103

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Aniline	5.6	(¹)
Benzene	6.0	(¹)
2,4-Dinitrophenol	5.6	(¹)
Nitrobenzene	5.6	(¹)
Phenol	5.6	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K103

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Aniline	4.5	(¹)
Benzene .....	.15	(¹)
2,4-Dinitrophenol .....	.61	(¹)
Nitrobenzene .....	.073	(¹)
Phenol	1.4	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K104

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Aniline	5.6	(¹)
Benzene	6.0	(¹)
2,4-Dinitrophenol	5.6	(¹)
Nitrobenzene	5.6	(¹)
Phenol	5.6	(¹)
Cyanides (Total)	1.8	(¹)

¹ Not applicable.

BDAT TREATMENT STANDARDS FOR K104

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Aniline	4.5	(¹)
Benzene	0.15	(¹)
2,4-Dinitrophenol	0.61	(¹)
Nitrobenzene	0.073	(¹)
Phenol	1.4	(¹)
Cyanides (Total)	2.7	(¹)

¹ Not applicable.

w. K106—Wastewater treatment sludges from the mercury cell process in chlorine production. On May 17, 1988, EPA proposed BDAT treatment standards for K106 nonwastewaters based on the performance of a thermal recovery (retorting) unit. However, the retorting process has been demonstrated chiefly on ores consisting primarily of mercury sulfides. In the proposed rule, the Agency stated that these ores are believed to have chemical and physical characteristics similar to K106 nonwastewaters. EPA received extensive comments from industry opposing the applicability, demonstrability, and economics of retorting K106 nonwastewaters. At the same time, EPA has examined the data that it has on the treatment of K106 and similar wastes and determined that

there was insufficient data to support the promulgation of the proposed treatment standards for K106.

The Agency has data points from a literature source on the treatment of K106 nonwastewaters combined with K071 nonwastewaters using dewatering followed by retorting. Since the source reports that K106 comprised only 0.5% of the feed to the retort furnace, the Agency believes the waste mixture does not sufficiently represent the majority of K106 wastes. The Agency has additional data from the treatment of a different K106 nonwastewater using retorting. However, this K106 was not generated by the conventional method of sulfide precipitation, but consisted of elemental mercury that was concentrated in the residual from membrane filtration of wastewater from the mercury cell process. EPA did not consider these data to be representative of K106 nonwastewaters because nineteen of the twenty facilities generating K106 currently generate it as a mercury sulfide sludge or residual. The Agency also has data from EPA testing on treatment of K106 nonwastewaters by stabilization. Data collected during these tests show that, while these technologies were properly operated, the data indicated that no significant reduction in leachability was achieved and in some cases, the leachability was increased.

Based on review of the sufficiency of the available data and on the comments received, the Agency has decided not to promulgate final BDAT treatment standards for K106 nonwastewaters in today's rule. Until sufficient treatment performance data can be obtained that verify that these technologies can provide significant treatment for K106 wastes, the Agency does not believe that it can promulgate treatment standards based on either of these technologies. It is important to point out that the Agency is not precluding the use of retorting or solidification for these wastes and that these technologies may prove to be BDAT for these wastes. EPA does intend to propose and promulgate numerical treatment standards for these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule, K106 wastes are restricted from land disposal according to the "soft hammer" provisions described in other sections of this preamble. [Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer"

waste contaminated groundwater. Thereby, moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K106 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33 (f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

The Agency has information on other technologies that have been identified as potentially applicable to K106 wastes. In particular, a secondary mercury recovery facility has been recently identified as treating K106 wastes by an unidentified process. Another facility that uses hydrazine to treat their wastewaters and generates K106 as a mercury hydroxide rather than a mercuric sulfide, subsequently retorts the K106 waste, to recover mercury prior to land disposal of a residual.

It is possible that because the sulfide precipitate is one of the least soluble forms of mercury salts, that no further treatment is required of K106 nonwastewaters. Since K106 already is a treatment residual from treating K071 and other mercury contaminated wastewaters, this result would be permissible under RCRA.

Other alternatives involve changing the process of generation of the wastewater treatment residuals from the use of sulfide to the use of hydrazine with lime precipitation to facilitate recovery of the mercury from K106 as a hydroxide residue. However, this would require authority under RCRA to regulate industrial process changes to facilitate changes in the composition of listed hazardous wastes. This authority does not currently exist.

x. K004—Wastewater treatment sludge from the production of zinc yellow pigments. K008—Oven residue from the production of chrome oxide green pigments. K021—Aqueous spent antimony catalyst waste from fluoromethanes production. K025—Distillation bottoms from the production of nitrobenzene by the nitration of benzene. K036—Still bottoms from toluene reclamation distillation in the production of Disulfoton K060—Ammonia still lime sludge from coking operations. K100—Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting. The BDAT treatment standard of "no land disposal" for K004, K008, K021, K025, K036, K060 and K100 wastewaters and nonwastewaters was proposed based on the premise of "no generation". In the proposed rule, EPA specifically requested comment on

current and potential sources of generation of these wastes as either wastewaters or nonwastewaters. While the Agency has received no specific comments that indicated any current generation of nonwastewater forms of these wastes as specifically listed, several commenters stated that this rule would preclude them from generation of these wastes.

In particular, commenters indicated that K060 is no longer generated because sodium hydroxide is used as a reagent rather than ammonia. Thus, K060 is not generated as listed. They stated that they may be forced to switch to ammonia due to an anticipated shortage in the supply of sodium hydroxide, and would thus begin to generate K060 as listed. A commenter also indicated that his facility was generating K060, as listed, but claims that he is reusing the K060 as a chemical substitute. One commenter claimed that although his facility is currently not generating K060 due to a cessation in production, but they may decide to resume production in the future.

The Agency cannot anticipate shifts in generation due to fluctuating reagent market conditions and therefore, has to disagree with these commenters. The Agency points out that this rule does not preclude generation of these wastes, but rather restricts the placement of these wastes in land disposal units. It is also important to point out that this is one of premises behind the EPA's establishment of petition processes for obtaining a variance from the treatment standard.

In the proposed rule, EPA recognized the possibility that wastewater forms of these wastes could be generated at a CERCLA site, during a corrective action at a RCRA facility, or as a leachate from a landfill. The Agency, therefore, also proposed a "treatment standard" for these wastewaters of "no land disposal". By establishing this standard, a facility that generated and needed to treat a wastewater, could submit a petition to the Agency for a variance from this treatment standard. The Agency believed that few, if any, petitions for a variance would be submitted because facilities generally discharge these wastewaters to a POTW or surface water under a NPDES permit. However, comments from several facilities that have land disposal units that contain previously disposed K004, K008, K021, K025, K036, K060, and K100 nonwastewaters, stated that if leachate from these wastes are identified with their respective waste codes, then the leachate would be considered wastewater forms and the "no land disposal" standard based on "no

generation" would not be justified. They also stated that elimination of land disposal of these wastewaters is not feasible and that numerical treatment standards should be promulgated.

The Agency agrees that this generation of wastewater could be significant, in that these wastes have been land disposed and do exist in many land disposal units. Therefore, the Agency has decided to promulgate a final BDAT treatment standard of "no land disposal" for only the nonwastewater forms of K004, K008, K021, K025, K036, K060, and K100 nonwastewaters. EPA does intend to propose and promulgate numerical treatment standards for the wastewater forms of these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule for the wastewater forms of K004, K008, K021, K036, and K060, this subgroup of wastes is restricted from land disposal according to the "soft hammer" provisions. Because K025 and K100 are wastes from the Second Third and Third Third, respectively, these provisions are not applicable to the wastewater forms of K025 until June 8, 1989 and the wastewater forms of K100 until May 8, 1990 (unless individual numerical treatment standards are proposed and promulgated prior to those dates). [Note: As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K004, K008, K021, K036, and K060 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR K004, K008, K021, K025, K036, K060, AND K100

[Nonwastewaters]

NO LAND DISPOSAL BASED ON NO GENERATION

8. Appropriate Technologies for Certain First Third Wastes for Which EPA Has Not Promulgated Treatment Standards

For the First Third Wastes identified in the tables at the end of this section, today's rule promulgates no specific BDAT treatment standards. RCRA section 3004(g)(6) (42 U.S.C. 6924(g)(6)) provides that if EPA fails to set treatment standards for any hazardous waste included in the schedule promulgated on May 28, 1986 (51 FR 19300) by the statutory deadline, such waste may be land disposed in a landfill or surface impoundment only if the facility meets certain statutory requirements and only until May 8, 1990. These requirements have been termed the "soft hammer" provisions.

EPA has identified several treatment technologies that are generally considered appropriate for the nonwastewater forms of the First Third Wastes. These technologies include: metal recovery, leaching/oxidation, metals stabilization, ash stabilization, chemical oxidation, cyanide destruction, biodegradation, incineration, PCB incineration, and open detonation/open burning. Treatment technologies generally considered appropriate for the wastewater forms of the First Third Wastes include: aqueous metal recovery, chromium reduction, metals precipitation, steam stripping, carbon adsorption, oxidation/reduction, chemical oxidation, cyanide destruction, biodegradation, incineration, and PCB incineration. As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes

and "soft hammer" waste contaminated groundwater. This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.

The technologies are listed as general categories of technologies that EPA believes have a reasonable probability of application to the waste codes listed. These categories do not specify any particular type of technology (e.g., incineration can represent liquid incinerators, rotary kiln, fluidized bed incinerators, etc.). The actual choice of a particular technology or even train of technologies depends on the physical and chemical characteristics of the specific waste or waste code. Specific selection of one technology depends on its functional design (e.g., if a particular nonwastewater is an organic liquid, then a liquid incinerator may be chosen over one designed to handle only solids).

EPA notes that many of these wastes, when existing as untreated wastes, are already prohibited from land disposal because they are California List wastes. The liquid cyanide wastes, for example, could exceed the statutory prohibition levels for cyanide. Several of the organic hazardous wastes undoubtedly exceed the statutory levels for wastes containing halogenated organics (HOC wastes) and are thus subject to the HOC treatment standard (after the effective date). For further discussion of the relationship of the California list prohibitions to "soft hammer" wastes refer to section III.E.1.

The following tables are presented as

an aid to generators seeking appropriate technologies to treat "soft hammer" F- and K-listed wastes. [For a discussion of the treatment requirements for "soft hammer" wastes refer to section III.C.] Several technologies are listed for each waste code, in descending order of preference. EPA notes that certain technologies are only appropriate for certain constituent types (i.e., cyanide destruction is appropriate for cyanide, not to metals or organics) and that more than one treatment technology may be required (if practically available) to treat the different constituents of concern in the waste. Thus, an F007 nonwastewater could require both cyanide destruction and metals recovery or stabilization prior to land disposal in a landfill or surface impoundment. Also, while one treatment process may generally satisfy the treatment requirements for "soft hammer" waste, the Agency recognizes that treatment trains (i.e., a combination of different treatment processes) may be appropriate for certain "soft hammer" wastes. For example, K022 wastewaters may require treatment by several of the technologies listed.

The Agency emphasizes that these tables are not to be considered as strict treatment guidelines. In general, however, EPA will use these tables in evaluating the demonstrations and certifications (see section III.C.3.) received for these wastes and is providing this information to aid the generator in determining the best practically available technology (if any) for treating his waste in compliance with § 268.8.

APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD NONWASTEWATERS

RCRA waste code	Potential California list applicability	Primary applicable treatment technologies
F007	Cyanides	Cyanide destruction.
F008		
F009	Metals	Metals recovery.
F019		Metals Stabilization.
K011	Cyanides	Cyanide destruction.
K013		Incineration.
K014		Wet air oxidation.
		Ash stabilization.
K017	Halogenated organics	Incineration.
K073		Biodegradation.
		Ash stabilization.
K031	Arsenic	Metals recovery.
K084		Leaching/oxidation.
K101 and K102/high arsenic		Metals stabilization.
K046/explosive	Lead	Open detonate/burn.
		Oxidation of explosive.
		Incineration.
		Metals stabilization.
K069/CaSO ₄	Lead	Leaching/oxidation.
		Metals stabilization.
K085	Halogenated organics and PCB's	PCB incineration.

APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD NONWASTEWATERS—Continued

RCRA waste code	Potential California list applicability	Primary applicable treatment technologies
K035..... K083..... K086 solv. sludges caust. water.....	Organics and/or metals.....	Biodegradation. Ash stabilization. Incineration. Wet air oxidation. Biodegradation.
K106.....	Mercury.....	Ash stabilization. Metals recovery. Metals stabilization.

APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD WASTEWATERS

RCRA waste code	Potential California list applicability	Primary applicable treatment technologies
F006..... F007..... F008..... F009..... F019..... K004..... K008..... K061/all..... K011..... K013..... K014..... K017..... K021..... K073.....	Cyanides..... Metals..... Chromium..... Cyanides..... Halogenated organics.....	Cyanide destruction. Aqueous metals recovery. Chromium reduction. Metals precipitation. Chromium reduction. Metals precipitation. Cyanide destruction. Carbon adsorption. Steam stripping. Carbon adsorption. Chemical oxidation. Biodegradation.
K022..... K035..... K036..... K083..... K060..... K031..... K046/nonexplosive..... K069/all..... K084..... K106..... K046/explosive.....	Unlikely to be applicable..... Arsenic, Lead or Mercury..... Lead.....	Steam stripping. Carbon adsorption. Chemical oxidation. Biodegradation. Metals precipitation. Oxidation/reduction. Metals precipitation. Oxidation of explosive. Metals precipitation. PCB incineration. Biodegradation. Carbon adsorption.
K085.....	Halogenated Organics and PCB's.....	Biodegradation. Carbon adsorption.
K086 solv. sludges caust. water.....	Halogenated Organics and/or..... Metals.....	Biodegradation. Carbon adsorption. Chromium reduction. Metals precipitation.

9. Burning in Industrial Boilers and Industrial Furnaces as BDAT for Certain California List HOCs

In the May 17 proposal, EPA proposed to amend the § 268.42(a)(2) treatment standard (i.e., incineration) applicable to certain California list HOCs to include burning in industrial boilers and furnaces (53 FR 17604). This approach was based on an earlier May 6, 1987 proposed rule on boilers and industrial furnaces burning hazardous waste (52 FR 17021) and was repropoed in the May 17 proposal because the change in the HOC treatment standard will precede the boiler and industrial furnace rule (which is scheduled for promulgation in 1989) which will establish final permitting and interim

status standards for emissions from these devices. The Agency is prepared to accept this discrepancy in timing of the boilers and furnaces rule because these devices are likely to be operated efficiently so as to achieve substantial destruction of the HOCs in the waste. This is because industrial boilers and furnaces have a commercial purpose which requires relatively efficient burning (see § 260.10 definitions of "boiler" and "industrial furnace"). In addition, non-industrial boilers, some of which might be expected to destroy HOCs less efficiently, are essentially prohibited from burning hazardous waste at all (see § 266.31(b)).

While many commenters agreed with the Agency's proposal, EPA received

several comments opposed to this approach, stating that the amendment to the HOC treatment standard should be delayed until the industrial boilers and furnaces emissions standards are effective. However, the Agency maintains that the reasoning presented in the May 17 proposal is valid and is promulgating the proposed amendment to § 268.42(a)(2). Today's rule will allow industrial boilers and furnaces burning in accordance with applicable regulatory standards to burn California list HOCs. When Part 266 standards become effective for these devices, the devices thus must meet these standards. Until then, these devices must meet other applicable Federal, State and local standards.

B. Testing and Recordkeeping

1. Waste Analysis

With the exception of the "no land disposal" standard (as discussed in section III. A. 6.), the treatment standards established in today's action are based on either (1) the concentration levels of the hazardous constituents in the waste or treatment residual, (2) concentration levels in an extract developed by use of the Toxicity Characteristic Leaching Procedure (TCLP), or (3) concentration levels using both total constituent concentrations and TCLP analyses. Expressing treatment standards as constituent concentration levels reflects the performance achieved by the technology (or combination of technologies) identified as the Best Demonstrated Available Technology (BDAT).

In the April 8, 1988 and May 17, 1988 proposed rulemakings, the Agency discussed the rationale for determining the analytical tests that EPA believes provide the most accurate measure of the performance of the technologies identified as BDAT. Generally, wastes for which destruction and/or removal technologies are BDAT (specifically, technologies that act to destroy organic constituents and recovery processes that reduce the metal concentration in a waste) would require a total constituent concentration analysis. Conversely, wastes for which stabilization or fixation technologies (i.e., technologies that decrease waste constituent mobility) are identified as BDAT, would require a TCLP extract analysis. EPA also used the TCLP as a measure of performance of metal recovery technologies on the basis that the leachability of metals remaining in the residual should also be analyzed as a measure of performance. In cases where a combination of both destruction or removal technologies and stabilization or fixation technologies are identified as BDAT, both analyses were employed to monitor compliance with the treatment standards. EPA solicited comment on this approach.

Many of the commenters generally argued that the proposed waste analysis requirements were inappropriate for use or too restrictive. Several commenters argued that the use of total constituent analysis is unnecessarily stringent, is beyond levels needed to protect human health and the environment, and does not provide generators with flexibility in determining how best to meet the treatment standards. Some commenters asserted that where treatment standards are based on total constituent analysis, the development of innovative technologies and the application of

existing technologies intended to reduce mobility will be discouraged. Other commenters expressed concern with the additional cost of the waste analysis requirements, particularly in cases where both testing methods must be used. Concerns with respect to the applicability of the analytical tests to complex mixtures of wastes were also expressed. Some commenters suggested an approach whereby the treatment standard would be developed based on both total constituent analysis and TCLP extract analysis, and would provide the generators with the flexibility of choosing the most appropriate analytical methodology.

Critical to the scheme for restricting land disposal of First Third wastes is the determination of whether certain constituent concentrations in wastes or treatment residues exceed the applicable treatment standards. Since today's treatment standards are based upon the performance capabilities of BDAT, the Agency continues to believe that the testing requirements should focus on the objective of the technology and provide the most accurate measure of the performance of that technology. Because the principle behind destruction and recovery technologies is to destroy or reduce the constituent concentration in a waste, the logical way to measure the performance of these technologies is to analyze total concentration of waste constituents. As noted in the April 8, 1988 proposal with respect to organic constituents, Congress expected that treatment would destroy organic constituents in hazardous wastes [Vol. 130 Cong. Rec. S9179 (daily ed. July 25, 1984)]. Where stabilization or fixation technologies are identified as BDAT, the TCLP is a better measure of performance since it is designed to measure the mobility of hazardous constituents from a waste matrix. The Agency believes this rationale to be the most defensible and thus is imposing the proposed waste testing/analysis approach as part of the land disposal restriction rules being finalized today.

This approach does not allow the choice of analytical methodologies, as suggested by some commenters, since the design of each analytical test (total constituent analysis or extract analysis) is most appropriate for monitoring the performance of certain technologies, but is not as appropriate for monitoring others. Commenters indicated that this approach may hinder the application of stabilization or fixation technologies. However, it will only do so where (a) current technologies intended to reduce mobility are unable to reach the level of performance provided by BDAT or (b)

where such technologies are not applicable or appropriate on a waste-specific basis. Since the treatment standards are based upon the "best" available treatment technologies, the Agency believes that the constituent concentration capable of being reached by these treatments must be measured by analytical methods which reflect the levels for which the "best" treatments were designed. With respect to analysis of complex mixtures of wastes, the Agency recognizes that such wastes potentially may increase the total number of constituents with corresponding treatment standards. However, waste analysis requirements are limited to two analytical tests (total constituent analysis or the TCLP), even if all existing restriction rules are applicable to the waste.

2. Notification Requirements

The Agency, in today's rule, is broadening the applicability of the § 268.7 notification provisions to apply to the First Third wastes, whether or not treatment standards have been established. For First Third wastes for which treatment standards and effective dates have been established, the notification requirements are the same as for other restricted wastes. However, for "soft hammer" wastes, the applicable statutory waste management requirements are somewhat different than for other restricted wastes (namely, a RCRA section 3004(g)(6) certification to EPA is not required for "soft hammer" wastes when land disposed in units other than landfills or surface impoundments). To account for these differences, today's rule includes corresponding requirements in § 268.7.

The basic difference between the notification applicable to the "soft hammer" wastes and the notification applicable to other restricted wastes is that rather than requiring notice of the applicable treatment standard or applicable prohibition (see existing § 268.7(a)(1)), the notice for "soft hammer" wastes requires the generator to notify the receiving facility of the applicable "soft hammer" prohibitions codified in § 268.33 (i.e., that such wastes are prohibited from land disposal in landfill and surface impoundment units unless accompanied by a valid certification (and demonstration, if applicable) in accordance with the requirements of § 268.8, relating to the practical unavailability of treatment technologies). The EPA Hazardous Waste Number, the manifest number associated with the waste shipment (if any), and any available waste analysis

data must also be included in this "soft hammer" notice. The notification will inform treatment facilities (and other handlers) of the obligation to treat "soft hammer" wastes destined for disposal in landfill or surface impoundment units to the extent treatment is practically available. This notification also serves to inform managers of these wastes that the storage prohibition in § 268.50 is applicable to the waste.

Furthermore, today's action amends § 268.7(a)(3) to specify that generators of wastes which are the subject of case-by-case extensions or national variances, or disposers of wastes with "no migration" exemptions must provide notification with each shipment of waste to treatment and storage facilities receiving the wastes. This change supplements, and is consistent with, the existing requirements to notify disposal facilities. The Agency is also requiring that generators retain copies of this notification.

3. Recordkeeping Requirements

The November 7, 1986, rule (51 FR 40572) established a tracking system for wastes subject to the land disposal restrictions requiring treatment facilities to have copies of the notifications and certifications received from generators or other treatment facilities, and disposal facilities to have copies of the notifications and certifications provided by generators or treatment, storage and disposal facilities as codified in 40 CFR 268.7. To better facilitate the "cradle-to-grave" tracking system, today's action includes amendments to the recordkeeping regulations to cover additional off site shipment scenarios and facilities which were previously overlooked. In addition, today's rule amends the recordkeeping provisions to include certain record retention requirements.

The previous recordkeeping provisions were applicable to generators, treatment facilities, and land disposal facilities, but the rule language omitted mention of facilities that simply store prohibited wastes without treating them. As indicated in the April 8, 1988 proposal, there is no reason for storage facilities not to be covered by the recordkeeping requirements. The Agency believes that all facilities receiving restricted wastes should be on notice that the waste is restricted and should be notified of the applicable treatment standard (or applicable prohibition) for the waste as part of a "cradle-to-grave" recordkeeping system. Accordingly, the Agency has corrected this oversight by including storage facilities under the recordkeeping requirements of § 268.7. Besides the

"generator-to-storage" scenario, this notification requirement also applies to a treatment, storage or disposal facility that sends a restricted waste (or treatment residue) off site to another treatment or storage facility. Note that this requirement is applicable to all restricted wastes, not only those affected by today's rulemaking.

EPA also proposed to amend the regulatory language of § 268.7(a)(3). This requirement concerns the case where a generator's restricted waste is eligible for land disposal because it is subject to an extension of the effective date or a "no migration" exemption (i.e., the waste may be land disposed, but will not necessarily meet the otherwise applicable treatment standards). In accordance with this provision, the generator must notify the disposal facility of the status of his waste. However, current regulatory language does not account for the possibility that the waste may not be sent directly to the land disposal facility, but rather to a treatment or storage facility. To avoid confusion in cases where the wastes are not shipped to a disposal facility, and to be consistent with other § 268.7 recordkeeping requirements, the Agency is amending § 268.7(a)(3), as proposed, to require that the notice be sent with each shipment of waste to the receiving facility.

Today's rule is adding a provision (see new § 268.7(a)(5)) to require generators to retain copies of data from testing the waste, treatment residual, or extract of the waste or treatment residual developed using the TCLP. The Agency believes that this addition to the regulations will establish consistency with the existing provisions requiring that data supporting decisions to restrict wastes based on knowledge of the wastes must be maintained in the generator's files. Furthermore, this action enhances the enforceability of the regulations.

Today's action also modifies the tracking system to include in §§ 268.7(a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) provisions stating that generators and storers must retain copies of the notifications and certifications forwarded to treatment, storage, and disposal facilities and received from storage facilities. The Agency believes that these changes enhance the enforceability of the land disposal restrictions regulations and make generator and storage recordkeeping requirements consistent with the recordkeeping requirements of treatment and disposal facilities.

Today's final rule also modifies § 268.7(a) to provide for a limitation on

the time period that records are required to be retained by generators. Under current regulations, owners and operators of facilities are required to maintain § 268.7 records for a finite period of time, i.e., until closure of the facility (§§ 264.73(b) and 265.73(b)). Previously, however, the regulatory language did not stipulate a period of time that generators needed to retain applicable records (i.e., all supporting data used to determine that a waste is restricted based solely on the generator's knowledge). As such, generators were required to maintain records for an indefinite period of time. In light of the additional information required to be maintained by generators under today's amendments to § 268.7 (i.e., copies of the § 268.7 notices, certifications, and all waste analysis data), the Agency believes that a finite time period may be a more appropriate burden on generators, while preserving the Agency's enforcement ability.

In the May 17, 1988 notice, the Agency proposed a 5-year limitation on the retention requirement for all records generators produce to comply with § 268.7 of the land disposal restrictions. EPA proposed (consistent with section 262.40 manifest requirements) that (a) the time period would begin on the date that the restricted waste is sent to on-site or off-site treatment, storage, or disposal, and (b) the retention requirement would be extended automatically during the course of any unresolved enforcement actions. EPA, however, did not propose to develop an exception reporting requirement like that required in the generator manifest provisions. The Agency recognized that the proposed retention period differed from § 262.40, which requires generators to maintain a copy of the manifest for a 3-year period, but considered the 5-year limit to be an appropriate compromise to imposing an additional exception reporting requirement. The Agency solicited comment on this approach.

Several commenters supported a record retention period of 3 years to be consistent with the generator recordkeeping requirements relating to manifests and waste analysis (see 40 CFR 262.40(a) and (c)). One commenter stated that the EPA would have ample opportunity to review these records within the 3-year period. Furthermore, it was indicated that a 5-year limit may lead to unnecessary confusion for both the regulated community and the regulators with respect to recordkeeping procedures.

The Agency disagrees with the commenters and is promulgating the 5-year generator record retention period

as proposed. EPA does not believe that such a retention period will lead to unnecessary confusion. Since such records are already required to be generated, the Agency is not imposing any additional requirement that generators affirmatively take action. This requirement simply provides that generators leave such records in their files for two more years rather than affirmatively taking action to destroy such records after three years. This 5-year time period is particularly important to the Agency's enforcement efforts because it allows EPA to obtain relevant records which would otherwise be lawfully destroyed after three years. Furthermore, the Agency believes that a 5-year record retention requirement is appropriate because it is consistent with the 5-year statute of limitations applicable to RCRA civil violations.

In addition, Agency data now indicate that § 268.7 notices are being included on manifests in few circumstances. Therefore, adopting such a requirement should not have a substantial impact on the generator manifest retention requirements.

As proposed, the record retention limit is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. For the purpose of this provision, an unresolved enforcement action includes, but is not limited to, the issuance of a Notice of Violation, a warning letter, or situations where a complaint has actually been filed.

The Agency notes that it expects the requirement on the generator to keep records of notifications and waste analysis data to be discontinued in 1994 (i.e., the latest date by which all listed or identified hazardous wastes will be subject to the treatment requirements of §§ 268.41, 268.42 and 268.43—assuming that certain wastes may be subject to a 2-year national capacity variance followed by two 1-year case-by-case extensions under 40 CFR 268.5). At that time, EPA will, however, reevaluate the prevalent waste management practices to determine whether the recordkeeping requirement for generators is necessary and should be extended.

C. "Soft Hammer" Requirements

1. Applicability

RCRA 3004(g)(6) (42 U.S.C. 6924(g)(6)) provides that if EPA fails to set treatment standards for any wastes included in the schedule promulgated on May 28, 1986 (40 CFR 268.10-268.12, 51 FR 19300) by the statutory deadline:

Such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) Such facility is in compliance with the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements); and

(ii) Prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. (RCRA section 3004(g)(6)(A))

This so-called "soft hammer" applies until EPA sets treatment standards or until May 8, 1990. After May 8, 1990, all scheduled wastes (except those subject to capacity extensions) for which treatment standards have not been set will be prohibited from all methods of land disposal that have not been determined to be protective through the "no migration" process (40 CFR 268.6).

In today's final rule, the Agency is not setting treatment standards for all wastes covered by the statutory requirements. EPA thus is promulgating regulations implementing the "soft hammer" provisions of RCRA.

In the April 8 proposal, the Agency discussed the applicability of "soft hammer" provisions to wastes also subject to the California list prohibitions (52 FR 25760, July 8, 1987). In today's final rule, the Agency has maintained the interpretation discussed in the proposal. During the period in which the "soft hammer" provisions are in effect, those wastes which are currently subject to the California list requirements would remain so, and thus might be prohibited from land disposal even though they are also "soft hammer" wastes. Likewise, compliance with the California list requirements does not necessarily fulfill the requirements of the "soft hammer" provisions. In previous preambles, the Agency has stated that the more waste-specific treatment standards and effective dates will supersede the less waste-specific California list requirements. In this case, the Agency has not made determinations with respect to the specific "soft hammer" wastes, and such wastes must (at the least) be treated or otherwise comply with the applicable California list requirements. For a more detailed discussion of the relationship of the California list requirements to First Third wastes, refer to section III. E. of this preamble.

The Agency is somewhat changing the applicability of the "soft hammer" provisions from that presented in the April 8 proposal by moving certain "soft hammer" wastewater treatment residuals to the Third Third (i.e., § 268.12). The specific wastewater

treatment residuals and the justification for this action is discussed in detail in section III. C. 3.

It is important to note that the "soft hammer" provisions of 40 CFR 268.8, including the demonstrations, certifications, and treatment requirements, are only applicable to those "soft hammer" wastes which (1) are not otherwise subject to California list treatment standards (e.g., halogenated organic compounds and polychlorinated biphenyls) (as opposed to California list statutory prohibitions or codified levels, e.g., liquid metal and cyanide-containing wastes), and (2) are to be disposed in landfills or surface impoundments. "Soft hammer" wastes managed by other methods of land disposal (e.g., land treatment, deep-well injection), or "soft hammer" wastes subject to California list treatment standards thus are not subject to the requirements of 40 CFR 268.8.

2. Interpretation of Specific Terms

In the statutory passage from RCRA section 3004(g)(6)(A) cited above, the terms "treatment" and "facility" are particularly important and were discussed in detail in the April 8 proposal. EPA received many comments regarding the interpretation of these terms, as well as the term "practical", as they relate to implementation of the "soft hammer".

a. *Treatment.* In the April 8 proposal, EPA solicited comment on the interpretation of "treatment" for the purposes of the "soft hammer". Many commenters stated that the Agency needed to define "treatment" in more concrete terms so that there would be a firm standard to serve as the basis for certification. (In fact, many owners and operators of disposal facilities stated that they would refuse to accept "soft hammer" wastes because of the uncertainty of possible enforcement actions due to the ambiguity involving the term "treatment".)

In spite of such comments, the Agency is not finalizing an interpretation of "treatment" that is much more definitive than in the April 8 proposal. Due to the complexity of available treatment technologies, the Agency is not able to make firm statements defining a hierarchy of treatment technologies for every "soft hammer" waste code, the availability of which should be investigated before a valid certification can be made regarding a particular waste code. By definition, the Agency has not made waste-specific determinations regarding "soft hammer" wastes, and therefore cannot make a specific interpretation of "treatment" for

each waste code (such an interpretation would be tantamount to a "soft hammer" treatment standard, which is a contradiction in terms). However, the Agency is able to offer a list of appropriate technologies to be considered as treatment for most of the F- and K-list "soft hammer" wastes (see section III. A. 8). In addition, EPA can list generic types of treatment for organic and inorganic wastes, in order of preference (i.e., which are best, next best, and so forth). However, as a preliminary matter, the Agency feels a discussion of the proposed approaches to interpreting "treatment" and comments received will be useful in understanding the difficulties encountered were one to take an alternative approach.

In the April 8 proposal, EPA expressed its belief that Congress intended that, during the period of the "soft hammer", only wastes treated to the most protective levels achievable by practically available technologies (if any) may be land disposed in landfills and surface impoundments (and that only the most protective of such units, i.e., units meeting the minimum technological requirements (MTRs) of section 3004(o), may be used). However, the Agency also stated that treatment is not required solely for the sake of treatment.

Having not made waste-specific determinations regarding the treatability of "soft hammer" wastes, the problem facing the Agency is to implement an enforceable approach to the "soft hammer" provisions by interpreting "treatment" such that it yields the most environmental benefit practically available, avoids treatment for the sake of treatment, and does not allow sham or *de minimis* treatment. An interpretation which is too stringent (i.e., an interpretation limiting "treatment" to BDAT-type treatment) could actually result in more untreated wastes being disposed in landfills and surface impoundments either because of the lack of such treatment capacity or because the treatment would possibly increase costs beyond a point that would be considered practical. Too lenient an interpretation (i.e., allowing the use of minimal treatment prior to disposal in a landfill or surface impoundment) could conceivably result in requiring treatment for the sake of treatment (an unnecessary burden on generators with little or no environmental benefit) or could actually encourage the use of sham or *de minimis* treatment where more protective treatment is practically

available. The Agency does not believe this is what Congress intended.

EPA requested comment on an approach that would limit the scope of treatment technologies to those that yield a designated percent reduction in the toxicity or mobility of hazardous constituents, using a 20% reduction as an example. The Agency received mixed comments, some supporting and some opposing the approach. Some of those supporting the approach suggested limiting the percent reduction to at least 90%. In reviewing comments, the Agency realizes that this approach would fail to mitigate the ambiguities of "treatment". Many commenters expressed concerns in evaluating the percent reduction, especially where a waste or mixture of wastes contains both organics and inorganics (the reduction of organics could concentrate the inorganics). Another problem would be to specify the waste analysis method to be used to evaluate percent reduction. And finally, it is clear to the Agency that many generators lack the expertise to identify appropriate technologies yielding the designated percent reduction without possibly costly and time-consuming analyses. Thus, the Agency would be compelled to identify technologies that yield the designated percent reduction for all "soft hammer" wastes, which the Agency is unable to do. Therefore, EPA is not finalizing this approach to interpreting "treatment".

EPA also requested comment on an approach requiring that "soft hammer" wastes be treated to achieve meaningful reductions of waste toxicity or mobility and stating that sham or *de minimis* treatment cannot give rise to a valid certification. Here again, ambiguity regarding the term "meaningful" concerned many commenters. Also, this approach does not clearly state the Agency's preference for the use of practically available technologies to treat "soft hammer" wastes, providing the most environmental benefit. (Although several commenters indicated that Congress intended to allow "soft hammer" wastes to be disposed without an additional burden of treatment, allowing for whatever treatment has been previously used, the Agency strongly disagrees and believes that Congress certainly would prefer the best practically available treatment of "soft hammer" waste to less complete levels of treatment.)

In today's final rule, the Agency is interpreting "treatment" as processing which reduces the toxicity of the waste or the likelihood of migration of hazardous constituents from the waste. The Agency had attempted to provide

some further detail to this broad interpretation by identifying waste management practices which EPA does not intend to require (or encourage) and by providing discussions in this preamble on the types of treatment the generator is expected to investigate.

The Agency emphasizes that it does not intend to require repetitive treatment by the same processes, such as re-incinerating ash derived from the incineration of the original waste. In many cases the Agency expects that the use of a single process to treat the waste, or quite possibly, one process for treating organics and a second process for treating inorganics, will satisfy the treatment requirements of § 268.8. EPA is not, however, absolutely limiting the treatment requirement to a single process because the appropriate treatment for some wastes may involve a standard treatment train of sequential processes, or the treatment residuals from one process may require a second treatment process. For example, use of steam stripping to treat wastewater may result in a concentrated stream that may require incineration before disposal (where the material cannot be recycled). Another example might be ash from incinerating an organic/metal-containing waste. In this case, further treatment (e.g., stabilization) might be required (depending on the concentration level of metals and the practical availability of stabilization). A final example is a waste containing metals and cyanides, which would require separate treatments for both types of constituents. The Agency will evaluate previous practices to determine whether such a train of multiple treatment steps is appropriate for a given waste.

As stated earlier, EPA is not requiring treatment solely for the sake of treatment. EPA believes appropriate technologies exist to treat "soft hammer" wastes, although these technologies may be determined not to be practically available. The Agency is not requiring, in the absence of practically available, appropriate technologies, that technologies which are not appropriate for a given waste be used. However, the appropriate technology which results in the most environmental benefit (i.e., in general, the greatest reduction in toxicity or mobility of hazardous constituents) must be used where practical and available.

EPA has attempted to provide some assistance to the generator on the types of treatment that should be investigated prior to making a certification under § 268.8. This assistance is presented in two ways. First, in section III.A.8. of this

preamble, EPA provided a list of technologies appropriate for treating specific F- and K-list "soft hammer" wastes, in order of preference, i.e., best to next-best and so forth. Because the Agency has not made a specific determination regarding the treatability of each waste, it cannot simply state that the most-preferred technology is BDAT and that each less-preferred technology yields a correspondingly less environmental benefit. However, in general, EPA will use this list of preferred technologies as a basic guide to evaluating whether the generator has investigated the technologies that yield the greater environmental benefit. Also, these appropriate technologies are listed by broad descriptions which EPA generally will not differentiate into more specific types of treatment. For example, "incineration" may mean liquid injection incineration, fluidized bed incineration, or rotary kiln incineration. Another example is "stabilization", which can include the use of silicates, lime/fly ash, cement, or cement kiln dust. Although EPA generally will not differentiate between the different specific treatment systems within the treatment category, the Agency will differentiate between the broad categories (i.e., the Agency may invalidate a certification for "stabilization" of organics if "incineration" is practically available, assuming incineration is the more-preferred treatment for the particular waste).

Second, the Agency is providing assistance in the form of a generic hierarchy of preferred treatment types (discussed later in this section). Where the generic hierarchy of preferred treatment types is used, the Agency will generally not differentiate between individual technologies within the generic treatment type to determine whether a different technology should be used. Rather, the Agency will evaluate whether a technology belonging to a more preferred generic treatment type is practically available. For example, "destruction" may mean thermal destruction or chemical destruction. In general, the Agency will not differentiate between the two; however, the Agency may invalidate a certification if a recovery process (a more-preferred generic treatment type) is practically available.

These lists of appropriate technologies and generic treatment types are not intended to be comprehensive, nor are they a complete catalog of the types of treatment that may be appropriate to consider in evaluating available treatment for a specific waste. There may indeed be other types of

appropriate technologies available to the generator of which the Agency is unaware (e.g., innovative technologies which the Agency may not consider "demonstrated" or "available" for the purposes of BDAT). [It should also be noted that a more detailed consideration of the actual performance of the technologies may, in fact, reveal that EPA's assumed hierarchy is incorrect for any specific waste and that there may be specific waste streams where a higher-ranked appropriate technology does not provide the greater environmental benefit or is not appropriate for the waste stream. For example, a particular "organic" waste stream may contain an unusually high concentration of metals, such that incineration would not be considered appropriate.] As a practical matter, the lists of appropriate technologies and generic hierarchy of treatment types represent the minimum effort a generator should make in seeking treatment for his waste, serving as a basis for determining whether treatment is practically available. The Agency may require further justification in the demonstration if the certifier has not investigated the availability of the appropriate technologies listed for a specific waste.

Generically, the Agency generally favors recycling/recovery as the best method for treating a waste, eliminating or reducing the residual to be disposed. Where recycling is unavailable or inappropriate or ineffective, the Agency prefers technologies resulting in the destruction of hazardous constituents, where such destruction may be either thermal (i.e., incineration or burning) or chemical, especially for organics. Where neither recovery nor destruction is available or appropriate, immobilization (stabilization) is often effective, especially for inorganic constituents (Cf. H. Rep. No. 198, 98th Cong. 1st Sess. 31 [setting out a comparable hierarchy of preferred waste management alternatives]). EPA wishes to note that, given the results of the TSDR Survey (see section III. H.), the Agency believes that liquid incineration and stabilization are generally available (although the generator must determine whether such treatment is appropriate or practically available for his waste).

b. *Facility*. As proposed in the April 8 proposal, the Agency interprets the term "such facility" in RCRA section 3004(g)(6)(A) to refer to the individual landfill or surface impoundment unit. This interpretation results in the requirement that where "soft hammer" wastes (and treatment residues) are disposed in a landfill or surface

impoundment, such unit must meet the minimum technological requirements (MTRs) of 3004(o) applicable to new units (i.e., double liners, leachate collection system, and groundwater monitoring).

The Agency received numerous comments on its proposed interpretation of "such facility". Most commenters opposed this restrictive use of the term and urged the Agency to interpret the term more broadly as referring to the entire facility, so that wastes could be disposed in any unit so long as any new, expanded or replacement units on the facility met the MTRs. The Agency does not agree with these comments and for reasons discussed in the preamble to the proposed rule (53 FR 11766) is finalizing the interpretation as proposed. To accept the interpretation urged by commenters would render section 3004(g)(6) meaningless; facilities are required to meet the requirements of section 3004(o) already by virtue of that provision. A further command to do so is unnecessary. As noted at proposal, the legislative history to this provision also strongly favors the Agency's reading. Moreover, these commenters ignore the remainder of section 3004(g)(6), which not only refers to "such facility" (referring back to landfills and impoundments), but also applies requirements that apply to new facilities, i.e., double liners and leachate collection systems.

EPA's interpretation is also consistent with the special concern that Congress has for surface impoundments and landfills as reflected in section 1002(b)(7) of RCRA:

Certain classes of land disposal facilities are not capable of assuring long term containment of hazardous waste, * * * and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes;

Further, the Agency believes that the alternative of accepting the use of the word facility as applying to all units within the property boundary would not lead to the interpretation that the commenters wished, but rather to an even more restrictive result, requiring that the wastes only be disposed at facilities where every landfill and surface impoundment unit at the facility met the MTRs. This results from the reference in the statute to " * * * the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements)". At a new facility (using the property boundary definition of facility), all such units would be required to meet the MTRs. Although the literal language of

3004(g)(6) allows this reading, EPA believes the better interpretation is the one it is adopting.

c. *Practical.* EPA received numerous comments on the April 8, 1988 proposal regarding the "soft hammer" provision. Although the Agency did not specifically request comment on the term "practical", many commenters believed this term was crucial to the interpretation of the statute and expressed their views that Congress intended "practical" to refer to the use of economic considerations in determining whether a treatment technology is a "practical" alternative to land disposal.

In general, the Agency does not consider costs when making waste management determinations under RCRA (since EPA is not authorized to do so), but rather limits such considerations to technical feasibility. However, EPA agrees with the commenters' assertions that economic considerations were not specifically excluded by Congress under RCRA section 3004(g)(6) and that by using the term "practical", Congress also allowed for cost considerations in evaluating whether available treatment is a practical alternative to land disposal for the purpose of the "soft hammer" under 3004(g)(6).

Many commenters expressed their concerns that this interpretation may create inconsistencies and confusion regarding a generator's determinations whether or not treatment is "practical". For example, a generator may consider any increase in cost to be impractical and certify an untreated "soft hammer" waste for disposal when, in fact, cost effective treatment is available. Because this certification would be self-implementing and would be considered valid until EPA took action to invalidate it, the Agency believes a discussion of how it will evaluate demonstrations with regard to the term "practical" is necessary.

Without time for further comment, EPA cannot promulgate a strictly quantified interpretation of the term "practical". Indeed, as with the interpretation of "treatment", such a task is undoubtedly self-defeating. However, the Agency can indicate how it will evaluate demonstrations and certifications regarding whether a treatment technology is practically available.

First, EPA will evaluate demonstrations with a consideration of previous practices. If a generator's "soft hammer" wastes were treated in the past, the Agency would consider at least this type of treatment to be "practical" for that generator. (This assumes that

the previous practice is currently allowable; for example, a previous practice of treatment in a surface impoundment that does not qualify for the treatment in surface impoundment exemption under § 268.4, is not allowable.) However, the generator must treat his waste by the *best* treatment (i.e., the treatment yielding the greatest environmental benefit) that is practically available. The Agency does not intend the "soft hammer" provisions to act as an excuse to discontinue current treatment practices (except where such practices are no longer allowable), nor does it intend to limit the scope of "treatment" to only previously conducted treatment.

Second, EPA is presenting a cost ratio that measures the costs of treatment relative to the baseline cost of shipment and disposal in a landfill or surface impoundment unit meeting the minimum technological requirements (MTRs) of 3004(o). The cost of shipment and disposal in an MTR unit is the baseline cost because this cost is incurred by both treated and untreated "soft hammer" wastes (assuming the wastes are disposed in a landfill or surface impoundment; as stated before, wastes disposed by other methods of land disposal are not subject to the demonstrations and certifications of § 268.8).

In general, given the ratio of:

$$\frac{\text{costs of treatment, shipment and disposal}}{\text{costs of shipment and disposal}}$$

EPA will ordinarily consider a ratio of 2.0 or greater not to be "practical". Similarly, a ratio of 1.5 or less will usually be considered "practical". Within the range of 1.5 to 2.0, EPA will generally consider treatment to be "practical" unless the certifier can demonstrate why this cost should be considered not "practical" (subject to judgement of individual circumstances). The Agency emphasizes that this cost ratio and consideration of "practical" is only a basic reference tool, and not a hard and fast rule. The generator may demonstrate that a cost ratio of less than 1.5 is not "practical"; and likewise, EPA may consider a cost ratio of greater than 2.0 to be "practical", especially where previous practices so indicate.

One anomalous situation could result if EPA relied solely upon this cost ratio. For example, Generator A has an on-site MTR unit, while Generator B (across the street from Generator A) must ship his "soft hammer" waste out of state to a commercial disposal facility. The costs of shipment and disposal for Generator

A would be negligible, and thus, almost any cost of treatment would be considered to be not practical, given the ratio above. Conversely, Generator B's baseline costs would be much greater, and therefore could be required to consider many more treatment technologies as practical. In such cases, EPA will evaluate Generator A's certification and demonstration of practically available treatment technologies by methods other than the above cost ratio. EPA will use other considerations, such as knowledge of available technologies and relative financial status or size of the facility and evaluate such demonstrations and certifications on a case-by-case basis.

In addition, the Agency emphasizes that where treatment is demonstrated to be a practical alternative to land disposal of untreated wastes, such treatment must be used. For example, a generator whose on-site treatment process is not yet on-line may not disregard "practical" off-site treatment and continue to dispose of untreated "soft hammer" wastes until his treatment process is on-line. Such a generator must employ the off-site treatment. (Note.—As discussed later in section III.C.6. of this preamble, the storage prohibition of § 268.50 applies to "soft hammer" wastes not subject to a valid § 268.8 certification. Therefore, "soft hammer" wastes may only be stored " * * * for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal".)

Furthermore, as stated earlier, the *best* practical treatment must be employed (given the list of appropriate technologies and the generic hierarchy of preferred treatment-types and determination of "practical"). This is not to be confused with the *most* practical (or cost-effective) treatment. Once all "practical" treatments have been identified, then the best treatment must be used.

EPA's interpretation of the term "practical" also responds to comments received requesting clarification of whether a generator must investigate treatment on a national or regional basis, or within an established area of, for example, 200 miles from the site. Given the Agency's interpretation of what constitutes "practical", this question becomes moot. The generator must investigate all practically available treatment, regardless of State or Regional boundaries, or any specific distance from the site.

As an alternative to the cost ratio, the Agency considered using a financial

ratio. Under this alternative, EPA would compare the incremental cost of treating a particular shipment of waste to a measure of the generator's financial strength, and determine that treatment is not practical where the ratio exceeded a specified percentage which the Agency believed would impose a significant hardship on the generator. For example, EPA would compare the incremental cost of treatment to the generator's net pre-tax profit for the waste generation period, and would consider a particular treatment to be not practical if the incremental cost exceeded X percent of net pre-tax profit.

The principal apparent advantage to using a financial ratio instead of a cost ratio is that it would tie the determination of whether a treatment is practical to the individual generator's ability to pay for the treatment. Thus the Agency could systematically avoid requiring a generator to incur undue financial hardship in seeking treatment. However, on further analysis, EPA rejected the use of a financial ratio for several reasons.

First, the use of any relatively simple financial ratio would tend to discourage waste minimization. Generators who produced relatively more waste per unit of product than similar generators in their industry would be more likely to exceed the ratio (all things being equal) and, therefore avoid the incremental treatment cost. Thus, this approach could result in rewarding inefficient generators for producing excessive amounts of waste; clearly contrary to the intent of Congress regarding waste minimization.

Second, the use of a financial ratio would pose serious implementation difficulties. For example, evaluating demonstrations for generators who produce wastes from diverse processes would require substantial effort on the part of the generator, EPA, and the States, to generate, coordinate, and substantiate the necessary data.

Third, a financial ratio would be difficult to enforce. In addition to the difficulties likely to be encountered using either the cost ratio or the financial ratio, such as verifying treatment cost data and generator diligence in pursuing treatment options, use of the financial ratio has the added difficulty of verifying the financial data submitted by the generator.

Finally, given the other considerations to be used in evaluating whether treatment is practical in addition to the cost ratio, the Agency believes the cost ratio is the more efficient method to evaluate practical treatment, in terms of time and resources. As illustrated in the example above, the cost ratio is not

suited for every situation, and the Agency strongly emphasizes that the cost ratio is not to be the sole consideration in evaluating whether a particular treatment is "practical".

The Agency realizes that not all generators of "soft hammer" wastes have the sophistication in waste management to know the relative costs of treatment, shipping and disposal for their wastes. However, the Agency believes the additional information needed to demonstrate the availability of practical treatment can be easily ascertained. Also, once the generator has investigated available technologies, EPA does not believe that waste management conditions (i.e., the appropriate technologies which are practical and available) initially certified to will change so drastically during the "soft hammer" period that a complete reevaluation of "practical" treatments will be required.

3. Certification Requirements

The Agency received many comments regarding the demonstration and certification required under § 268.8 to properly dispose of "soft hammer" wastes in a landfill or surface impoundment unit meeting the minimum technological requirements of RCRA section 3004(o). EPA is finalizing the certification requirements essentially as proposed in the April 8 proposal, with some changes made in view of the Agency's final interpretation of the terms "treatment", "facility", and "practical".

a. *Certification for Treated "Soft Hammer" Wastes.* Many commenters stated that residuals from treatment of "soft hammer" wastes should not require certification or subsequent management in MTR units. The Agency, however, disagrees with the commenters' reading of the statute and is today promulgating the proposed approach. As discussed in the April 8 proposal (53 FR 11767), the Agency believes the intent of Congress is to require certifications and management in MTR units for residuals from treatment of "soft hammer" wastes. The Agency has not set treatment standards for these wastes, and EPA does not believe that Congress intended for treated "soft hammer" wastes (especially where such treatment may be considered minimal relative to BDAT-type treatment) to be shielded from the requirements of 3004(g)(6) and treated the same as wastes meeting the stringent requirements for treatment under RCRA section 3004(m). It should also be noted that Congress equated treatment residuals and the underlying waste in section 3004(m)(2), so that

prohibitions applicable to the waste being treated apply to the treatment residuals as well (unless, of course, the residuals satisfy the applicable treatment standard—not the case for "soft hammer" wastes). Therefore, the requirements of § 268.8 also apply to treatment residues of "soft hammer" wastes. (As discussed more fully below, however, EPA does believe it appropriate to reprioritize the schedule for prohibiting certain wastewater residues from treatment of "soft hammer" wastes. To this extent, EPA has, it believes, accommodated some of the principle concerns raised by commenters.)

Commenters raised one further issue concerning the relationship of the "soft hammer" provision's applicability to treatment residues, plus the restrictions on placing "soft hammer" wastes only in impoundments and landfills that meet minimum technology requirements. A number of companies use BDAT-type treatment to treat "soft hammer" wastes, and then further treat the resulting treatment residues in impoundments that do not satisfy minimum technology requirements. For example, a number of companies incinerate off-specification commercial chemical products which are in the first third of the schedule of listed wastes but for which EPA did not propose treatment standards, and generate scrubber water which is further polished in biological treatment ponds. Such ponds meet the requirements of section 3005(j)(3) and so need not be retrofitted as of November 8, 1988 but for the receipt of the scrubber water from treating a "soft hammer" waste.

This result is not in keeping with the fundamental policy of the land disposal restrictions statutory provisions: effective pretreatment of wastes followed by unprohibited disposal of the treatment residues. In addition, the thrust of the "soft hammer" provision itself is to make disposal of untreated wastes for which there is no treatment standard more difficult, but not necessarily to impose the same difficulties on residues from BDAT type treatment of those wastes.

Accordingly, EPA has decided to modify its proposal so that residues from substantial treatment of certain "soft hammer" wastes may be further treated in land disposal units that do not meet minimum technology requirements. EPA is accomplishing this by amending the schedule of prohibited wastes to indicate that wastewater (i.e., less than 1% total organic carbon (TOC) and less than 1% total suspended solids (TSS)) residues from the treatment of "soft

hammer" wastes by the following list of technologies, are to be included in the third third of scheduled wastes for which EPA is to develop treatment standards. The wastewater residues from treatment affected by this action are limited to those wastewater (less than 1% TOC and less than 1% TSS) residuals resulting from the well-designed and well operated treatment of "soft hammer" wastes by: metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction. There is strong policy justification for taking this step: persons who are substantially treating their wastes to levels that may satisfy ultimate treatment standards are not precluded from further treatment of these wastes in polishing or advanced biological treatment (i.e., sections 3005 (j)(3) and (j)(13) units) that are substantially protective of human health and the environment (although not equivalent to minimum technology impoundments from the standpoint of preventing migration from the unit). Furthermore, EPA does not believe that these types of treatment residuals are the types of highly contaminated wastes deserving of prioritization in the first third of the schedule (see RCRA section 3004(g)(2)).

EPA also has decided to amend the schedule so that leachate and contaminated ground water that are derived from disposal of a "soft hammer" waste, or that contain "soft hammer" wastes, are also in the third third of the schedule (and thus would not be considered to be prohibited wastes until May, 1990 or until EPA establishes treatment standards, whichever is sooner). As discussed in section III.A.4., EPA generally believes that contaminated leachate and ground water (which is basically ground water with the leachate in it) can be treated to meet the treatment standard for the waste from which they are derived or that they contain. Notwithstanding this, however, if there is no treatment standard for the leachate or contaminated ground water to meet, EPA does not believe it fair to impose the "soft hammer" standards on these wastes. These wastes may be highly diluted so that treatment in section 3005 (j)(3) and (j)(13) impoundments may be appropriate. Thus, for reasons of fairness and appropriateness, EPA has decided to amend the schedule in section 268.12 to include leachate and contaminated ground water that are either derived from or that contain "soft hammer" wastes.

The following examples illustrate application of the regulations:

1. Generator A incinerates waste U119, a First Third waste for which EPA has not established a treatment standard. Scrubber water from the incinerator is piped to an aggressive biological treatment impoundment which has a section 3005(j)(3) retrofit waiver which does not satisfy the equivalency standard in section 3004(o)(2).

The scrubber water from incinerating this "soft hammer" waste is not a prohibited waste because it is in the third third of scheduled wastes. Consequently, placement in the surface impoundment does not violate the land disposal prohibitions.

2. Generator B treats a "soft hammer" waste in a wastewater treatment system which consists of chemical precipitation, biological treatment (all conducted in tanks), and polishing in an impoundment which has obtained a section (j)(3) waiver but cannot demonstrate section 3004(o)(2) equivalence.

The wastewater residue is not prohibited for the same reason as in example 1.

3. Generator C generates a leachate which is derived from disposal of certain "soft hammer" wastes and certain First Third wastes for which EPA has established treatment standards. The leachate is piped to an impoundment which has obtained a section 3005(j)(13) variance but has not satisfied section 3004(o)(2) equivalence.

The leachate could not be placed in the impoundment unless it meets the treatment standards for the listed wastes from which it is derived (or the most stringent standard in the event of overlapping treatment standards for the same constituent). However, if the leachate is treated to meet treatment standards before placement in the impoundment, then the placement is legal because the treated leachate would no longer be prohibited (since it would then derive from disposal of "soft hammer" wastes—a Third Third waste—and would meet all applicable treatment standards for the prohibited wastes from which it is derived).

4. Generator D generates a "soft hammer" wastewater which is pumped directly into an on-site impoundment prior to discharge under an NPDES permit. The impoundment is subject to a retrofit waiver under section 3005(j)(13), but cannot demonstrate section 3004(o)(2) equivalence.

The "soft hammer" wastewater is prohibited from land disposal in the (j)(13) impoundment. In this example, there has been no treatment, and thus

this wastewater is not a wastewater residue from treatment. Therefore, this wastewater is subject to the prohibitions in § 268.33(f) and precluded from disposal in a non-MTR impoundment.

Three final notes on this matter. EPA is reprioritizing only these selected wastewaters, rather than solids destined for landfill disposal, for a number of reasons. First, wastewaters can be treated further in surface impoundments but not in landfills. Thus, wastewaters could be treated further in non-minimum technology units; solids could not be. EPA thus does not wish to foreclose the possibility of further treatment of "soft hammer" wastewater residuals, leachate and contaminated ground water. There is no corresponding opportunity for treatment for solid residues. Second, most landfill units do meet the minimum technology standards at this time—and virtually all commercial landfill units receiving hazardous wastes do. Thus, the likelihood of residues from substantial treatment of "soft hammer" wastes going to non-minimum technology landfills is not great. In confirmation, EPA made inquiries and was not informed of any actual instances of such residues from treatment of "soft hammer" wastes going to non-minimum technology landfill units. Accordingly, EPA is only reprioritizing the schedule for the wastewaters discussed above. Third, this action does not affect the regulatory status of spent solvents, dioxins, or California list wastes contained in wastewater residues from treatment, leachate, or contaminated ground water. These wastes are not subject to the schedule pursuant to RCRA section 3004(g).

Finally, EPA is amending the schedule of prohibited wastes without notice and comment. EPA believes that the schedule is absolutely committed to its discretion, given that the schedule is not subject to judicial review (see RCRA section 3004(g)(3)). The schedule also arguably constitutes a rule of Agency procedure. In either case, opportunity for prior comment is not required when EPA promulgates or amends the schedule.

b. Certification by Owners or Operators as Well as Generators. Comments received from many owners or operators of treatment and disposal facilities expressed strong opposition to EPA's proposed approach to expand the statutory certification requirement applicable to generators to include certification by owners or operators.

Given the Agency's interpretation of "practical", EPA agrees with the commenters. The statute requires the

generator to make the determination whether alternative treatment is practically available. It is doubtful whether the owner or operator is able to determine whether a technology is "practical" for a generator. Also, because the Agency is requiring the generator to use the best practically available treatment (i.e., the treatment which yields the greatest environmental benefit), the generator must make the demonstration, whether treatment is practically available or not. Therefore, only the generator is required (and allowed) to make the demonstration and certification pertaining to the practical availability of treatment for his waste.

However, the owner or operator must certify that the generator's waste has been properly treated by the technology determined by the generator to be the best practically available treatment. This is consistent with the existing certification requirements under § 268.7(b) and will allow the Agency to track the waste from cradle-to-grave.

EPA emphasizes that it is not requiring an owner or operator to demonstrate that his treatment is the best practical treatment available. Rather, the generator must make this demonstration. However, the owner or operator must certify that he has properly treated the waste prior to disposal.

c. *Certification.* Having somewhat better defined the terms "treatment" and "practical", EPA is promulgating a less ambiguous approach to the "soft hammer" than was proposed. However, the basic approach is essentially the same.

Prior to disposal in a landfill or surface impoundment unit meeting the minimum technological requirements of 3004(o), a generator must demonstrate his good faith effort to treat his waste by the best practically available treatment technology(ies). The generator must determine which treatment technologies are practical and available, and choose the best treatment. (Where no treatment is practical or available, the generator may so demonstrate and certify.) To make this demonstration, the generator must provide a list of facilities and facility officials contacted, complete with addresses, telephone numbers and contact dates. The generator must document or otherwise explain his determination that the treatments are not practically available, or where treatments are available, must justify that he has chosen the best treatment that is practically available.

This demonstration and certification must be submitted to the Regional Administrator. The generator must also send the demonstration and certification

(and notification) to the receiving facility with the initial waste shipment. Provided that the conditions affecting the certification do not change (i.e., the same demonstration remains applicable), only the certification and notification need be sent with each subsequent waste shipment. (Copies of the certifications and demonstrations for each subsequent waste shipment need not be sent to the Regional Administrator, provided the conditions of the original certification do not change.) The notification, demonstration and certification must also be kept on-site in the generator's records. Also, should the Regional Administrator invalidate his certification, the generator must immediately notify all facilities that have received his waste that the certification (and demonstration) is no longer valid, and must keep records of this communication.

In general, one treatment process will satisfy the requirement with the exceptions of typically-used treatment trains or a combination of technologies, each of which deals with an organic and inorganic component of the waste. The Agency again notes that it generally believes that liquid injection incineration (including burning in industrial furnaces) is available for organic constituents and stabilization technologies are available for inorganic constituents.

Where treatment is available, the generator must send the notification, demonstration and certification to the treatment facility. After proper treatment, the owner or operator must then certify that the waste has been treated by the best practically available treatment (as documented in the generator's demonstration) and send this certification (and notification) and the generator's demonstration with the initial waste shipment to the disposal facility (a demonstration is not required for subsequent shipments unless conditions change). The treatment facility must keep records of demonstrations and certifications (and notifications) received and forwarded to disposal (or other receiving) facilities. The owner or operator of a treatment facility is responsible for treating the waste as the generator indicates in the certification (or demonstration) sent for that particular waste shipment, and for recordkeeping.

The disposal facility may dispose of "soft hammer" wastes (whether treated or not) only in MTR units (including those, like most section 3005 (j)(2) and (j)(4) impoundments, which satisfy the section 3004(o)(2) equivalency standard) (assuming disposal is in a landfill or surface impoundment). The owner or

operator of a disposal facility is responsible for ensuring that only "soft hammer" wastes (or residuals) subject to a certification pursuant to § 268.8 (and demonstration, for the initial waste shipment) are disposed in a landfill or surface impoundment unit, and that such unit meets the minimum technological requirements.

An owner or operator of a storage facility must keep copies of notifications, demonstrations and certifications of "soft hammer" wastes received and forwarded.

To implement this approach, the Agency is departing somewhat from the proposed § 268.8. Specifically, EPA is promulgating an additional certification for the generator for cases where practical treatment is available. This certification requires the generator to certify that, as indicated in his demonstration, he is sending his waste to be treated by the best practically available treatment for his waste. Also, EPA is adding a certification (similar to the 268.7(b) certification) for the owner or operator to certify that he has properly treated the generator's waste, as indicated in the demonstration.

4. Treatment of "Soft Hammer" Wastes in Surface Impoundments

As discussed in the April 8 proposal (53 FR 11768), "soft hammer" wastes treated in a surface impoundment subject to the exemption for treatment in § 268.4 would be required to be removed at least annually. The Agency proposed to allow that certification for disposal may be made without removal of the residuals provided that no further treatment is practically available. The demonstration and certification may be made at the time of placement in the impoundment for treatment.

Commenters generally supported this approach, citing the identical minimum technological requirements for units which can treat restricted wastes and units which can dispose of "soft hammer" wastes (and residuals) and the potential risk of damaging the impoundment liners during removal. Therefore, EPA is promulgating its proposed approach.

5. Retrofitting Variances

As proposed, today's final rule interprets the variance provisions of 3005(j)(11) to allow "soft hammer" wastes to be treated in surface impoundments that meet the minimum technological requirements of 3004(o) or have received variances under either 3005(j)(2) (one quarter mile from an underground source of drinking water and compliance with applicable ground

water monitoring requirements) or (j)(4) (located and designed to prevent migration of hazardous constituents to ground water or surface water). This result is logical since wastes not meeting treatment standards can also be treated in such impoundments (see section 3005(j)(11)). If there is no further treatment practically available, the residuals would not have to be removed annually, again paralleling the requirements for wastes for which treatment standards have been set and which are being treated in surface impoundments.

Although many commenters stated that the retrofit waivers granted under 3005 (j)(3) or (j)(13) should also be automatically recognized under the land disposal restrictions, the Agency disagrees. EPA believes that Congress would have included these waivers had it intended to do so. Such waivers simply do not automatically satisfy the equivalency standard in section 3004(o)(2), although they may on a unit-specific basis. Moreover, the absence of such exemptions in section 3005(j)(11) is highly suggestive. Even if EPA somehow construed the "soft hammer" provision to allow placement in non-equivalent section (j)(3) and (j)(13) impoundments, placement would still be prohibited under section 3005(j)(11). Therefore, "soft hammer" wastes cannot be treated in surface impoundments operating under retrofit waivers granted under the authority of 3005(j) (3) or (13), unless an equivalence demonstration has been made under 3004(o)(2). If this demonstration has been made, the surface impoundment has satisfied the requirements that would be applicable to new impoundments, and is not prohibited from receiving "soft hammer" wastes. (For a further discussion of these issues, see the April 8 proposal at 53 FR 11768.)

6. Storage Prohibition

As discussed in the April 8 proposal (53 FR 11770-11771), the Agency believes the storage prohibition in § 268.50 is applicable to all First Third wastes, including "soft hammer" wastes. The storage prohibition in RCRA section 3004(j) applies to wastes which are prohibited from "one or more methods of land disposal", and in RCRA section 3004(g)(6), "soft hammer" wastes are prohibited from disposal in a landfill or surface impoundment unit (unless subject to a valid certification).

EPA's proposed approach was that the storage prohibition would no longer apply to "soft hammer" wastes which are subject to a valid certification under § 268.8. No comments strongly opposing this approach were received, and

therefore, the Agency is promulgating the approach as proposed. "Soft hammer" wastes thus are prohibited from storage under § 268.50, unless such wastes are subject to a valid certification under § 268.8 (see section III.C.3. for the significance of *valid* certification).

D. Disposal of Restricted Wastes Subject to an Extension of the Effective Date

In the April 8, 1988 proposal, EPA solicited comment on its intent to change the interpretation of RCRA section 3004(h)(4) that was originally promulgated in the November 7, 1986 final rule (51 FR 40572). The Agency's original interpretation provided that restricted wastes subject to an extension of the effective date which are disposed in a landfill or surface impoundment must be disposed in a "facility" in compliance with the minimum technological requirements of section 3004(o). EPA originally interpreted "facility" to refer to the area within the property boundary, encompassing all waste management units (both new and existing). Because the minimum technological requirements of section 3004(o) (double liner, leachate collection system, and groundwater monitoring) only apply to new, replacement, or lateral expansion landfill or surface impoundment units (and not to existing units), a waste subject to an extension of the effective date could be disposed at a "facility" provided all new, replacement, and lateral expansion landfill and surface impoundment units met the 3004(o) requirements. However, this interpretation had little actual impact on whether the restricted waste would be disposed in an individual "unit" that satisfied the 3004(o) requirements.

EPA has reevaluated its original interpretation and now believes that Congress intended the term "facility" to refer to "unit", which is consistent with the Agency's current interpretation of the term "facility" in RCRA section 3004(g)(6), referring to the disposal of First Third wastes for which no treatment standards have been established. Legislative history to section 3004(h)(4), in fact, states that Congress meant to prohibit disposal of restricted wastes subject to a capacity variance in all surface impoundments or landfills except those meeting minimum technological requirements applicable to new facilities. (See H.R. Conf. Rep. No. 1133, 98th Cong., 2d. Sess., 87). (This passage in the Conference Report actually refers to disposal of wastes subject to a case-by-case capacity variance under section 3004(h)(3), but

EPA sees no basis for not applying it to section 3004(h)(4) as well.)

Although many commenters opposed this reinterpretation, the Agency believes the intent of Congress is clear. These commenters argued that the language of (h)(4) unambiguously applies to entire facilities and therefore that the Agency's existing interpretation is compelled. EPA disagrees. If anything, the literal language of the provisions compels the Agency's amended interpretation, because (h)(4) refers to "such facility", referring back to landfills and surface impoundments. Moreover, the reading the commenters urge makes the entire section (h)(4) into surplusage. Facilities must already be in compliance with the requirements of section 3004(o) by virtue of section 3004(o) itself. Thus, a waste subject to a capacity variance can only go to an entire facility that is complying with section 3004(o), and a command to do so (which is how the commenters would read (h)(4)) adds nothing to the law which is not already there. Congress clearly had something else in mind in promulgating section 3004(h)(4). The "soft hammer" provision of 3004(g)(6) throws light on congressional intent. This provision, as discussed previously, definitely requires "soft hammer" wastes to be disposed in minimum technology impoundments and landfills. EPA believes that Congress intended the same result for the other type of waste for which a prohibition effective date has passed but is being disposed without complying with treatment standards, namely wastes subject to a capacity variance. Finally, when one reads the unequivocal legislative history stating that wastes subject to a variance should only be disposed in minimum technology landfills and surface impoundments, it is clear to the Agency that not only is it the better reading of (h)(4) to apply to landfill and impoundment units, but that this reading probably is compelled.

However, the Agency does agree with commenters who asserted that EPA has some flexibility in setting the effective date of this new interpretation. Many commenters claimed that an August 8, 1988 effective date of the reinterpretation would disrupt their surface impoundment operations, which have been scheduled to comply with the November 8, 1988 deadline (in section 3005(j)(1)) for retrofitting surface impoundments (i.e., the date on which surface impoundments must cease to receive, store, or treat hazardous wastes unless the unit is in compliance with the minimum technological requirements of section 3004(o), or has received a waiver

from these requirements under RCRA section 3005(j) (2), (3), (4), or (13)). While the 3-month period involved is relatively short, the Agency does agree that this reinterpretation could disrupt surface impoundment operations by, in effect, moving the retrofit deadline ahead without ample notice. Because it is not EPA's intent to unduly disrupt business operations where flexibility exists to do otherwise, the Agency has decided to make the new interpretation of RCRA section 3004(h)(4) effective on November 8, 1988. Since the interpretation of 3004(h)(4) is not a regulation establishing a prohibition from land disposal, it need not become effective immediately (see RCRA section 3004(h)(1)). However, given that the Agency believes its earlier interpretation to be wrong, that Congress intended that wastes subject to capacity variances to go to minimum technology landfills and impoundments, and that the period of business disruption for impoundments ceases on November 8, EPA believes that good cause exists to make this interpretation effective in three months rather than six (see RCRA section 3010(b)(3)).

E. Relationship to California List Prohibitions

As discussed in the July 8, 1987 California list final rule preamble (52 FR 25773), and as reflected in § 268.32(h) (i.e., the overlap of HOCs and other prohibited wastes), where the Agency makes a waste specific determination involving a California list waste, such determinations will supersede the California list treatment standards and effective dates. This principle also applies to the restrictions on the land disposal of First Third wastes. While it is clear that Agency-established treatment standards or effective dates for First Third wastes are more waste-specific than California list determinations, the applicability of the California list restrictions to "soft hammer" wastes and wastes granted a national capacity variance requires clarification.

1. "Soft Hammer" Wastes

As stated in the April 8 proposal, many of the First Third wastes are also subject to the California list prohibitions. Once treatment standards become effective for such First Third wastes, the California list prohibitions are superseded. However, since no treatment standards will have been promulgated for "soft hammer" wastes (i.e., no waste-specific determinations will have been made for these wastes), such wastes will remain subject to the

California list prohibitions and treatment standards.

Because EPA does not believe that Congress intended for the statutory California list prohibitions to act as a shield from requirements promulgated under RCRA section 3004(g)(6), the "soft hammer" requirements will also apply. This includes the requirement that when such wastes (or treatment residues) are disposed in a landfill or surface impoundment only those landfill and surface impoundment units that comply with the minimum technological requirements of 3004(o) may be used. In other words, treatment to comply with the California list prohibitions does not necessarily satisfy the "soft hammer" requirements of 40 CFR 268.8 and, in fact, the California list prohibitions represent the minimum treatment required for such "soft hammer" wastes prior to land disposal—since such wastes are prohibited from land disposal at the statutory levels.

The Agency does, however, make a distinction between wastes which are subject to the statutory prohibitions of RCRA section 3004(d) (e.g., the metals and free cyanides) and wastes which are prohibited under 40 CFR 268.32 and for which EPA has promulgated treatment standards under Part 268 Subpart D (e.g., the liquid hazardous wastes containing halogenated organic compounds (HOCs) in concentrations greater than or equal to 1000 mg/l). For wastes which are subject to treatment standards (rather than the statutory prohibitions of 3004(d), or the codification of the statutory levels, such as dilute HOC wastewaters), EPA has made a determination regarding the best treatment for such wastes. The Agency believes that this determination (and subsequent treatment standard), even though it is not necessarily a waste specific determination, is more protective than the treatment requirement under the "soft hammer" provision of § 268.8. Conversely, for wastes which are subject to the statutory prohibitions of 3004(d), or which are subject to the statutory levels codified in 40 CFR 268.32, EPA has not made a determination regarding the best treatment for such wastes, and therefore, the waste management requirements under the "soft hammer" provision of § 268.8 may be more protective.

Therefore, where "soft hammer" wastes are subject to an applicable California list treatment standard under Part 268 Subpart D (i.e., the treatment standard is currently in effect), the "soft hammer" provisions of § 268.8 do not apply. Likewise, where "soft hammer"

wastes are *not* subject to an Agency-established California list treatment standard under Subpart D (or the treatment standard is not yet effective) the "soft hammer" provisions of § 268.8 are applicable, with the minimum acceptable treatment for such wastes being treatment to comply with the statutory prohibitions under RCRA section 3004(d), or the codified statutory levels under § 268.32. Because the "soft hammer" provisions are only applicable to wastes that are disposed in landfills or surface impoundments, "soft hammer" wastes disposed by other methods clearly must comply with the California list prohibitions (which apply to all forms of disposal). This approach is consistent with the Agency's intent that where more than one regulatory requirement applies, the more stringent requirement governs.

EPA is providing the following list of P- and U-list "soft hammer" wastes which are potentially subject to the California list HOC treatment standard on November 8, 1988 (see section III.H. of this preamble for a discussion of the rescission of the previously granted national variance for HOCs) for the benefit of the regulated community. EPA notes that such wastes have the *potential* to be subject to the California list HOC treatment standards, depending upon the concentration levels of Part 268 Appendix III halogenated organics (52 FR 25791). After November 8, 1988, such wastes will not be considered "soft hammer" wastes (because they will have an applicable treatment standard) and will not be subject to the prohibitions in § 268.33(f) or the certification requirements of § 268.8. The wastes must be treated in accordance with § 268.32 until EPA promulgates more waste-specific treatment standards.

"Soft Hammer" Wastes Potentially Subject to the California List HOC Treatment Standard

- K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin
- K021—Aqueous spent antimony catalyst waste from fluoromethanes production
- K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production
- K085—Distillation of fractionation column bottoms from the production of chlorobenzenes
- P004—Aldrin
- P016—Bis-(chloromethyl) ether
- P036—Dichlorophenylarsine

P037—Dieldrin
 P050—Endosulfan
 P058—Fluoroacetic acid, sodium salt
 P059—Heptachlor
 P123—Toxaphene
 U029—Methyl bromide
 U036—Chlordane, technical
 U037—Chlorobenzene
 U041—n-Chloro-2,3-epoxypropane
 U043—Vinyl chloride
 U044—Chloroform
 U046—Chloromethyl methyl ether
 U061—DDT
 U066—1,2-Dibromo-3-chloropropane
 U067—Ethylene dibromide
 U074—1,4-Dichloro-2-butene
 U077—Ethane, 1,2-dichloro-
 U078—1,1-Dichloroethylene
 U129—Lindane
 U130—Hexachlorocyclopentadiene
 U158—4,4-Methylene-bis-(2-chloroaniline)
 U185—Pentachloronitrobenzene
 U192—Pronamide
 U209—1,1,2,2-Tetrachloroethane
 U210—Tetrachloroethylene
 U211—Carbon tetrachloride
 U226—Methylchloroform
 U227—1,1,2-Trichloroethane
 U228—Trichloroethylene
 U237—Uracil mustard

The following examples illustrate the principles discussed above regarding overlap of California list and "soft hammer" wastes:

1. Generator A generates a corrosive waste which is also a commercial chemical product listed in § 268.10 (i.e., a First Third waste). EPA has not promulgated a treatment standard for this waste.

Generator A cannot dispose of the waste until it is treated so that it is no longer corrosive (or liquid) (see 40 CFR 268.32(a)(1), codifying the statutory prohibition level). The waste also is subject to the "soft hammer" provisions, so that further treatment may be required if the waste is destined for land disposal in an impoundment or landfill, and such units must comply with the minimum technological requirements of 3004(o).

2. Generator B generates a First Third waste for which no treatment standard has been promulgated that also contains greater than 1000 ppm HOCs, and that is not a wastewater.

In this case, the waste must be treated by the method specified for HOCs in § 268.42. Residues from such treatment would not be subject to the "soft hammer" provisions.

3. Generator C generates a First Third waste for which there is no treatment standard. He mixes this waste with a California list HOC waste that is subject to the treatment method specified in § 268.42.

The mixed waste must be treated by the method specified in § 268.42. Residues from such treatment remain subject to the "soft hammer" provisions (since one cannot automatically render the "soft hammer" provisions inapplicable by mixing a "soft hammer" waste with a waste for which a treatment standard is applicable; to allow this would create a counterproductive incentive. Moreover, the "soft hammer" portion of the mixture still has not met an applicable treatment standard.) However, if the "soft hammer" waste contains organic toxicants, the HOC treatment method undoubtedly constitutes "treatment" for the purposes of the "soft hammer" waste (although further treatment of ash for inorganic constituents may be needed, if practically available).

EPA is aware that the interpretive reading provided in this example means that all residues from treating mixtures of wastes subject to treatment standards and "soft hammer" wastes would have to be disposed in surface impoundments and landfills satisfying minimum technology requirements. There could be cases where it is technically desirable to commingle "soft hammer" wastes with prohibited wastes subject to a treatment standard. If a person desired to dispose of the residues in a non-minimum technology unit, however, he could only do so by segregating the "soft hammer" wastes for separate treatment. The Agency is not certain how often this situation might arise. Should it turn out to pose significant practical problems, EPA would consider redesignating such treatment residues as Third wastes provided all applicable treatment standards are satisfied and provided that the mode of treatment also is appropriate for the "soft hammer" waste.

2. Wastes Granted a National Variance

In the April 8 proposal, EPA solicited comment on its approach to the applicability of the California list prohibitions to First Third wastes for which treatment standards are promulgated, but which also receive a national variance due to insufficient treatment capacity. In setting the treatment standard, the Agency is making a more waste-specific determination (than the California list prohibitions); however, this determination is not effective until the variance ends. EPA proposed an approach where such First Third wastes would remain subject to the California list prohibitions during the period of the national variance.

For example, assume that a liquid metal-containing First Third waste has

been granted a national variance because of inadequate capacity to treat the waste to the treatment standard, yet was not granted a variance under the less stringent (in terms of concentration levels of the metal) California list prohibitions that would otherwise be applicable. The Agency's proposed approach would require that, because capacity exists to treat the "California list" waste to allow for land disposal, the California list prohibitions still apply and the "First Third" waste would be required to comply with the California list prohibitions. The First Third treatment standard would then become applicable when the national variance expires.

EPA received no comments presenting a valid argument for not promulgating this approach, and thus, the Agency is finalizing the proposed approach. This approach is also consistent with the Agency's intent that where more than one regulatory requirement applies, the more stringent requirement governs.

F. Petitions To Allow Land Disposal of Prohibited Wastes

Under section 3004 (d), (e), and (f) of RCRA, owners and operators of land disposal units and deep injection wells may petition the Administrator for a variance from the prohibition on land disposal of untreated hazardous waste. To be considered for such a variance, the petitioner must demonstrate "to a reasonable degree of certainty that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous."

On November 7, 1986 EPA promulgated regulations (51 FR 40572) that provide procedures for submittal of petitions to allow land disposal of waste prohibited under Subpart C of Part 268. The regulation (40 CFR 268.6) includes information that must be provided in a "no migration" demonstration, the criteria the demonstration must meet, and the Agency's review and approval procedures.

Today's final rule creates additional requirements at 40 CFR 268.6 for petitioners seeking to demonstrate "no migration" for land disposal units by adding new procedural and informational requirements, effective on the date of promulgation, to those already codified at 40 CFR 268.6. (Note: The Agency also has proposed substantive rules to implement the land disposal restrictions for waste disposed in deep injection wells (52 FR 32446, August 27, 1987). The reader should refer to this for a complete discussion of how the Agency intends to apply the "no

migration" standards to deep injection wells.) The additional requirements for land disposal units that EPA proposed (53 FR 11771) involve the following factors:

1. Compliance with other applicable laws;
2. Monitoring plans for land disposal units;
3. Changes in operating conditions from the ones described in the variance application; and
4. Detection of migration of hazardous constituents.

For today's final rule, these requirements remain largely unchanged from the proposal. The Agency received a number of comments regarding the additional requirements for "no migration" demonstrations promulgated in today's rule, as discussed below.

1. Other Applicable Federal, State, and Local Laws

Commenters both supported and opposed a provision that would require petitioners to include information demonstrating that units for which they seek a "no migration" variance comply with other applicable Federal, State, and local laws. Those objecting to this provision did so implicitly, by opposing any additional burdens or requirements on petitioners desiring to demonstrate "no migration" and receive a variance.

As EPA stated at proposal, this requirement is needed to reveal environmentally sensitive areas and endangered species which must be protected. Since all subtitle C facilities obviously must comply with all applicable laws, the Agency is not imposing any substantive burden, and indicating which other laws apply in the "no migration" petition serves the useful function indicated above and so justifies any incremental administrative burden.

2. Monitoring Plans

a. *Requirement for monitoring media of concern to verify compliance with "no migration" demonstration.* EPA proposed that petitioners monitor their units (unless monitoring is technically impractical or infeasible) to determine if the "no migration" standard has been satisfied. Commenters both supported and opposed different aspects of this provision. The Agency continues to believe its proposal to be simple common sense. Without continued monitoring of a unit to verify the demonstration that there will be no migration for as long as the waste remains hazardous, there is no way to confirm that the "no migration" standard is being met. Thus, EPA is requiring monitoring of the appropriate media at the unit boundary. Since a "no

migration" unit is to prevent migration for as long as the waste remains hazardous, monitoring in theory could last in perpetuity. EPA believes as a practical matter that monitoring until the end of the post-closure care period in 40 CFR 264.117(a)(2) (i) and (ii) (or until the wastes are removed from the unit) should suffice. To preserve flexibility, however, the Administrator may specify an alternate monitoring period on a site specific basis.

Other commenters emphasized that monitoring should not be required in a generic fashion that would cause unnecessary monitoring at some units, with no site-specific flexibility. The Agency agrees. Petitioners should include information that clearly demonstrates why monitoring of any medium would be unnecessary.

Commenters also suggested that where Subpart F ground water monitoring already exists, additional ground water monitoring should not be necessary. EPA disagrees. Subpart F ground water monitoring is not measured at (or as near as possible to) the unit boundary, and so will not detect migration at the earliest practicable time, and therefore will not be sufficient for the purposes of "no migration" verification. The Agency believes that monitoring immediately at, or as near as possible to, the unit boundary must be performed to assure that there "will be no migration from the disposal unit."

b. *Exclusion from "no migration" where monitoring is "technically infeasible or impractical".* EPA proposed that monitoring would not be required for one or more media where owners or operators demonstrate that monitoring is technically infeasible or impracticable. Most comments received opposed this provision. Commenters believed that monitoring should be mandatory, and that no infeasibility exclusion exists under Part 264 monitoring requirements. Some commenters argued that if monitoring cannot be performed to verify "no migration", a variance should not be granted, because a demonstration cannot be made with a "reasonable degree of certainty" if monitoring is infeasible. Some commenters felt that predicting "no migration" based on modeling cannot replace the use of monitoring data to verify that migration is not occurring.

The Agency agrees in principle that, in most cases, monitoring of surface disposal units is required to verify a "no migration" demonstration and that modeling alone will not be sufficient for such units. The Agency recognizes, however, that monitoring immediately at the unit boundary sometimes will be

difficult in certain locations or under unusual physical conditions at a site. In these cases, EPA would require monitoring (or modified monitoring) to be conducted as near as possible to the unit boundary without compromising the integrity of the unit.

3. Changes From Conditions Described in the Variance Application

This provision requires owners or operators to report to the Administrator any changes or planned changes in conditions at the unit and/or the environment around the unit that may affect conditions upon which the petition was approved. Most comments received concerning this provision supported minimizing reporting requirements for those cases where an owner or operator plans or observes changes to a "no migration" unit. Commenters favored immediate reporting only of those changes to the variance that are significant and affect the potential for migration of hazardous constituents from the unit. EPA agrees that minor and seasonal changes in parameters such as pH, conductivity, salinity, etc. do not warrant a report to the Agency. However, the Agency believes that where changes are planned or occur that would significantly depart from those conditions described in the variance and that would affect potential migration of hazardous constituents, the owner or operator should report them. In particular, proposed changes in the waste stream received, operating practices, or unit design and construction must be reported. In addition, unusual and significant changes in the environment, such as the water table or surface water flow, warrant reporting.

4. Detection of Hazardous Constituent Migration

This provision remains essentially unchanged from the proposal. It requires that if the owner or operator determines there is migration of hazardous constituents from the unit, he must immediately suspend receipt of prohibited waste and notify EPA within 10 days. The Agency is required to determine the appropriate action to be taken within 60 days from notification.

Certain commenters indicated that to avoid false positives, additional sampling to verify a release should be allowed before making a determination that migration has occurred. The Agency agrees. While some commenters objected that action should be taken immediately upon detection of a release, EPA believes that verification within the 10-day time period is reasonable. The

proposed 10-day notification period should provide ample time for the owner or operator to perform additional sampling to verify that waste constituent migration from a unit has occurred. Therefore, the Agency has decided to retain a 10-day notification period.

Commenters also objected to the proposed 60-day period, in which the Agency determines whether the owner or operator of a unit can continue to receive prohibited wastes and whether the "no migration" variance is to be revoked, as being too lengthy. EPA disagrees and believes that the 60-day period is needed to determine whether the termination of waste acceptance and the revocation of the "no migration" variance is appropriate. Furthermore, the 60-day time period is the maximum time for the Agency to decide; under circumstances that the Agency determines warrant a faster response, it will do so.

Some commenters also stated that where the release is temporary, or once it has been corrected, waste acceptance should be resumed. EPA disagrees. We instead concur with comments indicating that once a verified release has occurred at levels that would constitute migration, the "no migration" demonstration will have failed, and the unit will have violated the terms of the "no migration" variance. At this point, the "no migration" variance would be revoked for that unit. (Corrective action might also be required pursuant to section 3004(u) or 3008(h).)

G. Approach to Comparative Risk Assessment

1. Proposed Use of Risk Analyses

Within the regulatory framework for implementing the land disposal restrictions, the Agency has in the past considered certain criteria in the determination of "available" treatment technologies. Among the criteria formerly considered was whether application of a treatment technology poses greater risks to human health and the environment than those posed by direct land disposal of the waste. See 51 FR 40592-40593 (November 7, 1986).

The previous framework for determining Best Demonstrated Available Technologies employed a methodology that evaluated the analytical results of the comparative risk analyses to identify whether a treatment alternative was "available" to set 3004(m) treatment standards. Because of the strong statutory presumption against land disposal, particularly RCRA sections 1002(b)(7) and 1003(a)(6), the analysis required that

a treatment technology must be clearly more risky than land disposal (beyond the level of uncertainty in the model) before it could be designated as unavailable. Although the Agency conducted comparative risk assessments in the development of regulations prohibiting land disposal of certain spent solvent and dioxin-containing hazardous wastes (November 7, 1986 final rule) and California list wastes (July 8, 1987 final rule), use of the analyses did not affect the determination as to whether a specific treatment technology was available.

In both proposals on First Third wastes (see 53 FR 11774, April 8, 1988 and 53 FR 17606, May 17, 1988), it was explained that the Agency had decided not to utilize the existing comparative risk assessment approach for this rulemaking and was reconsidering its future application in the determination of "available" treatment technologies. One of the primary concerns addressed in the proposals related to cases where the land disposal practice is found to be less risky than any of the treatment alternatives. In such a situation, the analysis would result in a determination that no treatment technologies are "available" for the purpose of setting treatment standards. Because land disposal is prohibited by the statute in many cases, this determination would mean that a generator could not treat and land dispose of such wastes, even though the treatment technologies in question may be in compliance with other regulatory standards that are deemed protective of human health and the environment and may provide substantial treatment.

In the April 8, 1988 and May 17, 1988 proposals, the Agency solicited comment on a risk analysis approach that would distinguish between the overall degree of risks posed by alternative treatment technologies. Under this proposed approach, the net risk posed by alternative practices would be considered in the identification of "best" treatment technologies.

2. Agency Response to Comments

A number of commenters submitted remarks pertaining to the utilization of some form of risk analysis process. Several of these commenters specifically addressed the proposed approach to comparative risk assessment, while most of the others made recommendations to EPA on risk comparisons between alternative treatment technologies.

Those who commented on the proposed approach, generally agreed that the comparative risk assessment

should be modified to account for the anomalous results that could occur using the existing method. One commenter supported the Agency's decision in which the risks posed by direct land disposal and alternative treatment technologies would no longer be compared. This commenter asserted that EPA does not have the authority under RCRA to conduct such a comparison as a basis for establishing BDAT. Other commenters continued to support an approach that weighs the risks of treatment technologies against the risks of disposal of untreated wastes in the consideration of "available" treatments. One commenter argued that the existing comparative risk approach should be modified rather than discarded because it serves as a valuable tool where land disposal is less risky than some treatment alternatives but more risky than others. Another commenter stated that Congress could not have intended the EPA to choose a treatment method that presents more risks than land disposal.

As indicated in the November 7, 1986 final rule (see 51 FR 40593), EPA interprets section 3004(m) as directing the establishment of treatment standards which minimize the threat to the "environment" as applying to all media (i.e., air, land, and water). Because there is no language indicating that this term does not include all media, EPA does not believe that the section 3004(m) standard can be read to preclude comparative risk analyses. However, the development of 3004(m) standards, which substantially diminish toxicity or reduce the likelihood of migration of hazardous constituents, specifically apply to "levels or methods of treatment", and are not contingent upon a risk comparison of treatments to land disposal. Upon further consideration, the Agency believes that the existing risk analysis approach does not begin with a comparison of equally viable options since land disposal of untreated wastes is not a viable alternative management practice under RCRA (see also RCRA sections 1002(b)(7) and 1003(a)(6)). In view of this point and the concern noted earlier, the Agency has concluded that use of the risk analysis method previously employed provides minimal benefit as a decision tool. Thus, the Agency has chosen not to utilize the existing comparative risk assessment approach in developing this final rulemaking.

The majority of the commenters who addressed risk assessments urged the Agency to compare risks between alternative treatment technologies. Several commenters asserted that the

methodology for selecting BDAT should assess the achievement of alternative treatment technologies in reducing the release of hazardous constituents to environmental media. Other commenters urged the Agency to complete comparative risk assessments between specific technologies and the proposed BDAT with respect to only certain hazardous waste codes. The Agency agrees that comparative risk analyses between applicable technologies would likely provide useful information for identifying BDAT.

3. Future Use of Comparative Risk Assessment

In the proposed rulemakings (53 FR 11774, April 8, 1988; 53 FR 17606, May 17, 1988), EPA indicated that risk analyses may be conducted to distinguish between the overall degree of risk posed by alternative treatment technologies and to make determinations concerning the "best" technology based on net risk posed by the alternative practices. In light of the commenters' support, EPA is examining the feasibility of implementing such an approach under future land disposal restriction determinations. However, as a result of the time constraints of the statutory schedule, EPA is unable to develop and utilize such an approach for the waste codes addressed by today's final rulemaking. To the extent possible, additional details of an approach for comparing risks between alternative technologies will be included as part of a proposed rulemaking on land disposal prohibitions for "Second Third" wastes.

H. Determination of Alternative Capacity and Effective Dates for First Third Wastes, F001-F005 Spent Solvents, California List Halogenated Organic Compounds, and Contaminated Soil and Debris

As explained in the May 17, 1988 proposed rule, EPA developed a new data base for capacity analyses, comprised of information from responses to the National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities (the TSDR Survey). EPA conducted the TSDR Survey during 1987 and early 1988 to obtain comprehensive data on hazardous waste management capacity and on volumes of hazardous waste being land disposed. The TSDR Survey was sent to all RCRA permitted or RCRA interim status facilities that have or plan to have treatment, disposal or recycling capabilities. The TSDR Survey was also sent to a statistical sample of facilities that have only storage. This

new data base is the primary source of data for evaluation of capacity for this rule, with supplemental data used as needed. A complete description of the TSDR Survey data set and other supplemental data will be found in the *Background Document for First Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions First Third Waste Volume, Characteristics and Available Treatment Capacity*, referred to hereafter as the "Capacity Background Document".

On November 8, 1983 certain capacity variances promulgated in the Solvents and Dioxins final rule (51 FR 40572) expire and the wastes that had been covered by the extended effective date will be subject to the land disposal restrictions treatment standards. Also, as explained in section III. H. 4., the Agency is rescinding certain capacity variances promulgated in the California list final rule (52 FR 25760). Several commenters expressed concern that the increase in wastes requiring treatment capacity because of variance expirations and rescissions were not included in the capacity analyses for the proposed rule. The commenters argued that the volumes of these wastes reduce the capacity available for treatment of First Third wastes. However, the commenters were incorrect in this assertion; the volumes of wastes that were subject to capacity variances that are expiring or are being rescinded were included in the capacity analyses in the May 17 proposal. The capacity available for treating First Third wastes presented in the May 17 proposal, and in today's final rule, reflects only the amount of available capacity remaining after accounting for the treatment of wastes restricted from land disposal under the Solvents and Dioxins and the California list final rules.

1. Total Quantity of Land Disposed First Third Wastes

The capacity analyses for the First Third wastes for which EPA is promulgating treatment standards were performed using the new TSDR Survey data. EPA estimated the total quantities of First Third wastes that are land disposed annually based on the results of the TSDR Survey. The total waste quantities and the methods by which the wastes are stored, treated, and disposed are presented in Table 1 below. One method of land disposal, underground injection, is not included in the analyses. Underground injection has been addressed in separate rulemakings. Other methods of land disposal that are affected by today's rule, such as

utilization of salt dome and salt bed formations and underground mines and caves, are not addressed in the capacity analyses because of insufficient data.

About 71 million gallons of First Third wastes are disposed of in surface impoundments annually. Ultimately, all of this waste will require alternative treatment capacity. Approximately 6 million gallons of First Third wastes are stored in surface impoundments annually. Stored wastes are eventually treated, recycled, or permanently disposed in other units. To avoid double counting, the volumes of wastes reported as being stored in surface impoundments were not included in the estimates of volumes requiring alternative treatment capacity. However, these wastes will eventually require alternative storage capacity because of the restrictions on placement of wastes into surface impoundments.

About 328 million gallons of First Third wastes are treated annually in surface impoundments that do not meet minimum technology requirements, or are residuals that have been removed from those surface impoundments that do meet minimum technology requirements. An additional 49 million gallons are stored in waste piles, 29 million gallons are treated in waste piles, and 378 million gallons are disposed in landfills and land treatment units.

TABLE 1.—TOTAL VOLUME OF LAND DISPOSED FIRST THIRD WASTES

(Million gallons/year)

Storage:	
Waste piles	49
Surface impoundments	6
Treatment:	
Waste piles	29
Surface impoundments	328
Disposal:	
Landfills	302
Land treatment	76
Surface impoundments	71
Total	861

Table 2 and Table 3 subdivide the total amount of land disposed First Third wastes into two categories: wastes for which treatment standards are being promulgated today, and wastes for which treatment standards are not being promulgated but which are subject to the "soft hammer" requirements. Wastes for which standards are being promulgated today are presented in Table 2 below.

TABLE 2.—VOLUME OF LAND DISPOSED FIRST THIRD WASTES FOR WHICH STANDARDS ARE BEING PROMULGATED

[Million gallons/year]

Storage:	
Waste piles.....	41
Surface impoundments.....	4
Treatment:	
Waste piles.....	27
Surface impoundments.....	320
Disposal:	
Landfills.....	274
Land treatment.....	76
Surface impoundments.....	70
Total.....	812

Table 3 presents the waste quantities and the method of land disposal for the First Third wastes for which treatment standards are not being promulgated, and which are subject to the "soft hammer" provisions. This category includes all of the First Third P and U wastes, as well as the following wastecodes: F007, F008, F009, F019, K011, K013, K014, K017, K031, K035, K046(partial), K069(partial), K073, K084, K085, K086, K101 (partial), K102 (partial), K106, and wastewaters from F006, K004, K008, K021, K022, K036, K046, K060, K061, K069 and K083.

TABLE 3.—VOLUME OF LAND DISPOSED FIRST THIRD WASTES FOR WHICH STANDARDS ARE NOT BEING PROMULGATED

[Million gallons/year]

Storage:	
Waste piles.....	8
Surface impoundments.....	2
Treatment:	
Waste piles.....	2
Surface impoundments.....	7
Disposal:	
Landfills.....	28
Land treatment.....	<1
Surface impoundments.....	1
Total.....	48

2. Required Alternative Capacity

The Agency assessed the requirements for alternative treatment capacity resulting from the promulgation of today's rule. EPA first characterized the volumes of First Third wastes for which treatment standards are being promulgated, since these wastes require alternative treatment. Waste streams were characterized on the basis of land disposal method, waste code, and physical/chemical form. Using this information, the Agency determined which treatment technologies are

applicable to the waste volumes and placed the wastes into treatability groups. The volumes of alternative treatment capacity that would be required when owners or operators comply with the land disposal restrictions being promulgated was then determined. Based on this analysis, the Agency estimates that today's rule could affect about 812 million gallons of First Third wastes that are land disposed annually. Of this total, about 777 million gallons will require alternative treatment capacity, the remainder being stored. As explained elsewhere in this preamble, EPA is promulgating treatment standards expressed as concentration limits based on the performance of the Best Demonstrated Available Technology (BDAT). It is not a requirement that BDAT be used to achieve the concentration levels, but these technologies, as described in section III. A., were generally used as the basis for determining available capacity.

Several commenters expressed concern that the capacity required to treat "soft hammer" wastes was not considered in the capacity analyses, and because of this omission, the amount of available capacity would be less than was presented in the May 17 proposed rule. Since "soft hammer" wastes have no BDAT treatment standards, there is nothing upon which to base a capacity analysis. The Agency evaluated the characteristics and volumes of these wastes, and found that because of their physical form and comparatively small volume, they will not have a significant impact on available capacity. (See Table 3.) In addition, the "soft hammer" provisions require that wastes be treated where treatment is practically available (assuming such wastes are disposed in landfills or surface impoundments). If treatment is found not to be practically available, the wastes may be land disposed after appropriate certifications as to availability and practicality of treatment are made. In effect, the generators of "soft hammer" wastes will do waste-specific capacity analyses. If treatment capacity is in particularly short supply, generators can be expected to certify to the lack of practically available treatment and dispose with limited or no treatment. Thus, these wastes should not displace treatment capacity for other restricted wastes.

Also, several commenters said that the capacity for wastes generated at CERCLA response actions and RCRA corrective actions should be included in the analyses, since the number of response actions and corrective actions

will be increasing and they could require much of the available capacity to treat large volumes of wastes. The Agency has determined that the greatest likelihood for a conflict of this type is for those wastes where BDAT is identified as solids/sludge incineration. The Agency has evaluated the potential demand for solids incineration capacity from CERCLA response actions and RCRA corrective actions. Although only gross estimates are available at this time, it is clear that this added increment of wastes would be in excess of the solids incineration capacity available. Therefore, a two-year national capacity variance has been granted to soil and debris from RCRA corrective actions and CERCLA response actions contaminated with wastes for which BDAT standards are based on incineration (see section III. H. 5. b.). Other types of treatment capacity (e.g., stabilization, wastewater treatment) appear to be available in amounts sufficient to accommodate other RCRA corrective action and CERCLA response action wastes. EPA plans to do a more quantitative accounting of these wastes for future land disposal restrictions rules as volume estimates become more precise.

Several commenters also argued that the quantities of wastes requiring alternative capacity are underestimated because they do not include "derived from" wastes. To the extent that "derived from" wastes were described in the TSDR survey, they are accounted for in the capacity estimates. However, if "derived from" wastes were misreported or were not included in the TSDR survey report, they may be underestimated. The Agency believes that most of the potential underreporting of "derived from" wastes was for landfill leachate. Large, commercial hazardous waste landfills can produce substantial quantities of leachate which, depending on the types and levels of contamination, may require further treatment. In response to comments raising potential capacity problems for treatment of leachate, the Agency contacted several large commercial hazardous waste landfill operators to determine how they now manage leachate. They indicated that most leachate is now sent to POTW's, to NPDES discharge or to underground injection. Since all of these practices can continue to be used, there does not appear to be a capacity constraint on disposal of leachate.

Commenters also raised questions about the ability to treat leachate derived from multiple waste streams to the appropriate treatment standards.

The Agency examined data on leachate submitted by large, commercial hazardous waste facilities and found that levels of hazardous constituents were generally well below those seen in industrial wastes. This indicates that wastewater treatment processes should provide sufficient treatment to allow leachate to meet the applicable standards. Since available wastewater treatment capacity far exceeds the demand, the Agency has concluded that there is no capacity constraint on treatment of leachate. (See section III. A. 4. for more discussions of the applicability of treatment standards to leachate.)

The volumes of First Third wastes that require alternative treatment/recycling capacity are presented in Table 4. This table includes only the quantities of wastes that require alternative commercial capacity; the volumes given do not include wastes that can be treated on-site by the generator. Several commenters argued that the Agency overestimated the amount of on-site capacity since there is no guarantee that on-site treatment will achieve the regulatory treatment standards. However, the Agency included only BDAT treatment in its assessment of both off site and on-site capacity. EPA develops BDAT such that any well-designed and well-operated treatment process should be capable of complying with the standards.

TABLE 4.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES
[million gallons/year]

Waste code	Required capacity
F006.....	129.0
K001.....	3.7
K021.....	0.0
K022.....	0.1
K044.....	0.0
K045.....	0.0
K046.....	1.6
K047.....	0.0
K060.....	0.0
K083.....	0.1
K086.....	0.2
K087.....	1.4
K099.....	0.0
K101/102.....	0.1
K004.....	0.0
K008.....	0.0
K015.....	0.0
K016.....	0.3
K018.....	0.0
K019.....	0.1
K020.....	<0.1
K024.....	0.2
K030.....	<0.1
K036.....	0.0
K037.....	<0.1
K048.....	37.1
K049.....	32.6

TABLE 4.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES—Continued

[million gallons/year]	
Waste code	Required capacity
K050.....	11.8
K051.....	78.1
K052.....	12.5
K061.....	83.1
K062.....	40.1
K069.....	0.0
K071.....	3.9
K103.....	0.1
K104.....	<0.1

¹ See section III. H. 3. i. for a discussion of wastes not requiring alternative treatment capacity.

3. Capacity Currently Available and Effective Dates

Table 5 below presents the volumes of First Third wastes that require alternative treatment capacity, arranged according to the technology description of the alternative treatment required. The amount of capacity that is available in each case is also presented.

It is important to note that some of these wastes, because of their actual physical form, cannot meet treatment standards simply by using the technology identified as BDAT. These wastes must be treated through several steps, called a treatment train. The Agency assumed that the residuals in such cases will be treated using alternative technologies prior to land disposal; therefore, the total volumes reported were assigned to appropriate technologies.

TABLE 5.—ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES

[Million Gallons/Year]		
Technology	Available	Required
Incineration:		
Liquids.....	274	<1
Solid/Sludge.....	7	¹ 6-160
Solvent Extraction.....	1	¹ 0-154
Stabilization.....	495	231
High Temperature Metals Recovery.....	34	62
Wastewater Treatment:		
Chromium reduction, chemical precipitation, settling/filtration.....	260	40
Carbon adsorption, chromium reduction, chemical precipitation, settling/filtration.....	12	1
Sludge Treatment:		
Acid leaching, chemical oxidation, sludge dewatering.....	0	4

¹ Both incineration and solvent extraction are alternative technologies for K048-K052. Thus, the al-

ternative capacity required for First third wastes ranges from 6 to 160 million gallons/year for solid/sludge incineration, and 0 to 154 million gallons/year for solvent extraction.

a. *Liquid Incineration.* Treatment standards for K015, K083 and K086 wastes are based on liquid incineration. The Agency estimates that about one million gallons per year of these wastes require liquid incineration treatment capacity. Using the new TSDR survey data, the Agency evaluated commercial capacity and determined that there is approximately 274 million gallons available, ample capacity to treat these wastes. Thus, no capacity variance was granted for K015, K083, or K086 wastes.

b. *Solid/Sludge Incineration Capacity.* Treatment standards for K001, K016, K018, K019, K020, K022, K024, K030, K037, K087, K101 and K102 wastes are based on solid/sludge incineration. The Agency estimated that 6 million gallons per year of these wastes require solid/sludge incineration capacity. Using the new TSDR Survey data, the Agency evaluated commercial incineration capacity and determined that there was about 7 million gallons of solid/sludge incineration capacity available. Based upon this data, the Agency did not grant a capacity variance for these wastes.

The Agency received a number of comments on the availability of incineration for K001 wastes. Commenters noted that some incineration facilities refused to take K001 wastes containing pentachlorophenol, while other facilities would accept only "true" K001 wastes, and not wastes which resemble, but are not, K001. Commenters also noted that substantial volumes of K001 wastes, as well as some soils contaminated with K001, will be generated when surface impoundments at wood preserving facilities are closed. Based on these factors, some commenters requested that a two-year national capacity variance be granted for K001 wastes.

An industry association submitted comments which included an informal survey conducted by one of its members of eight solids incineration facilities. According to these comments, three of the facilities would accept K001 waste for incineration without constraints on whether it was "true" K001 or K001-like waste. A fourth facility expected to receive a permit modification prior to August which would enable it to take K001, again without constraints. Two facilities said they would incinerate "true" K001 wastes. One facility would not accept K001 with pentachlorophenol. The final facility was not planning to continue incineration activities.

This information indicates that there is capacity available to incinerate "true" K001 wastes. The wastes which resemble, but are not, K001 are not subject to the treatment standards and, therefore, cannot be considered in capacity determinations. Finally, if a particular generator cannot find an incineration facility that can or will accept his waste, he may qualify for a case-by-case extension of the effective date (see 40 CFR 268.5).

It is possible that K001 wastes produced when old surface impoundments are closed could exceed the available commercial incineration capacity, particularly if the incineration was scheduled to occur within the next twelve months. However, a number of factors could affect the amount of K001 generated during closures, particularly closure plans which incorporate *in situ* treatment either as a final solution or as a volume reduction measure prior to removal of the waste. Also, as noted above, the generator can apply under § 268.5 for a case-by-case extension of the effective date where special circumstances pertain.

Soils and debris contaminated with K001 (and other First Third wastes requiring incineration) are being granted a two-year national capacity variance (see section III. H. 5.).

Based upon these factors, the Agency will not grant a capacity variance to K001 wastes.

c. Solvent Extraction or Incineration. Treatment standards for K048-K052 wastes are based on solvent extraction followed by stabilization of residuals or sludge incineration followed by stabilization of ash. The Agency estimates that about 154 million gallons per year of these wastes require either solvent extraction or sludge incineration capacity as a result of today's final rule. The Agency evaluated commercial capacity and determined that there is approximately 1 million gallons of solvent extraction capacity and 7 million gallons of sludge/solid incineration capacity available. (Approximately 6 million gallons of sludge/solid capacity will be needed for K001, K018, K019, K020, K022, K024, K030, K037, K087, K101, and K102 wastes.) Therefore, a 2-year national capacity variance from the effective date is being granted for these wastes.

d. Stabilization. Treatment standards for F006 and K046 wastes are based on stabilization. In addition, stabilization is required for treatment residuals from other wastes. (As discussed in section III. A. 7., the Agency is setting a treatment standard based on stabilization for non-explosive K046 wastes, while allowing the "soft

hammer" to apply to explosive K046 wastes.) Because the Agency does not have data which allows it to determine the volume of waste associated with each type of K046, EPA has assumed the entire volume will require stabilization. The Agency estimates that about 148 million gallons per year of these wastes require stabilization capacity as a result of the treatment standards promulgated today.

Many commenters questioned the capacity analysis for F006, arguing that the evaluation of available stabilization capacity does not guarantee that it is capable of achieving the treatment standard. The standard is based on the performance of cement and pozzolanic-based stabilization. Although the TSDR Survey does contain data on other stabilization methods, only these two types of stabilization were included in the capacity analysis (i.e., only the types considered as BDAT). Furthermore, the methodology for determining BDAT includes factors that account for performance variability; therefore, the Agency is reasonably sure that the capacity included in this analysis is capable of achieving the treatment standard. The Agency evaluated commercial capacity and determined that there is approximately 495 million gallons of stabilization capacity available, more than enough to treat these wastes. No capacity variance is being granted for wastes for which treatment standards are based on stabilization.

e. High Temperature Metals Recovery/Stabilization. The treatment standard for K061 waste containing 15% or more total zinc (high zinc K061) is based on high temperature metals recovery. For wastes containing less than 15% zinc (low zinc K061) the standard is based on stabilization. Based on data received from commenters, approximately 75% of K061 waste contains 15% or more total zinc. Thus, an estimated 62 million gallons of high temperature metals recovery capacity is required but only 34 million gallons of capacity is available. Therefore, a two-year national capacity variance from the high temperature metals recovery standard has been granted to high zinc K061 wastes. As discussed in section III. A. 7., the Agency is setting an interim standard for high zinc K061 wastes based on stabilization. Consequently the entire volume of K061 waste will require stabilization capacity on an interim basis. Thus, the required stabilization capacity is 83 million gallons for K061 plus 148 million gallons for other wastes, for a total of 231 million gallons.

Using the new TSDR survey, the Agency has determined that there is enough stabilization capacity for K061 wastes and other waste codes and, therefore, no capacity variance is being granted for the two-year period during which the interim stabilization standard will be in effect.

f. Wastewater Treatment. Treatment standards for K062 waste are based on wastewater treatment (chromium reduction, chemical precipitation and filtration). The Agency estimates that less than 42 million gallons per year of this waste require various types of wastewater treatment as a result of the treatment standards promulgated today.

Using the new TSDR survey data, the Agency evaluated commercial capacity and determined that there is adequate capacity available for wastewater treatment. Therefore, no capacity variance is being granted for K062.

g. Sludge Treatment. Treatment standards for K071 waste are based on sludge treatment (acid leaching, chemical oxidation, and sulfide precipitation and filtration). The Agency estimates that about 4 million gallons per year of this waste requires sludge treatment as a result of the treatment standards promulgated today.

After analyzing the new TSDR Survey data, the Agency has determined that there is not enough treatment capacity commercially available to treat K071. Therefore, a 2-year national capacity variance is being granted for K071.

h. Wastes for Which Treatment Standards are Based on Solvent Recovery or Solvent Extraction. The treatment standards for K103 and K104 wastes are based on solvent recovery. BDAT for K103 is solvent extraction, followed by steam stripping, followed by carbon adsorption, followed by carbon regeneration. BDAT for K104 is solvent extraction followed by liquid incineration and followed by steam stripping, followed by carbon adsorption, followed by carbon regeneration.

Using the new TSDR Survey data, EPA determined that the only volumes of these wastes that require alternative commercial capacity are those "derived from" wastes not amenable to solvent recovery or solvent extraction because of their physical forms. Therefore, the Agency assumed that the K103 and K104 wastes requiring alternative treatment will undergo incineration, followed by stabilization of the ash. The Agency believes that this treatment can achieve the standard, and the volumes of K103 and K104 requiring alternative treatment have been included in the incineration and stabilization totals.

i. *Wastes Not Requiring Alternative Capacity.* After reviewing the new TSDR Survey, EPA determined that a number of First Third wastes do not require alternative capacity, even though treatment standards are being promulgated. These wastes are: K004, K008, K015, K018, K021, K036, K044, K045, K047, K060, K099, and some K069. Each of these is discussed below.

Treatment standards for K044, K045 and K047 wastes are based on open detonation, for which there is no capacity constraint. The Agency believes that when open detonation is properly conducted, the residuals are no longer reactive, nor do they exhibit any other characteristic. Other treatment methods which achieve the same results are also permissible. Therefore, K044, K045, and K047 do not require alternative commercial capacity and further analysis is not necessary.

Treatment standards for K099 waste are based on chlorine oxidation. The Agency determined that this waste is only being generated at one facility, and that the generator is able to treat the waste on-site. Therefore, no volumes were reported as requiring alternative commercial capacity and no further analysis is necessary.

Treatment standards for K015 waste are based on liquid incineration, and standards for K018 waste are based on solid/sludge incineration. After analyzing the new TSDR Survey data, the Agency determined that neither of these wastes was reported in the TSDR survey as being land disposed. Therefore, no alternative treatment capacity is required. It is possible that all of these wastes are being treated on-site and do not require commercial capacity. It is also possible that these wastes are not being land disposed, or if they are, they are land disposed by a method not covered in the TSDR Survey (underground mines) or not included in the proposed rule (deep well injection). Finally, the wastes may not have required alternative capacity in 1986, the reporting period covered by the TSDR Survey.

Treatment standards for non-calcium sulfate K069 waste are based on total recycle, meaning this waste cannot be land disposed. Available information shows that most K069 wastes currently being generated are being recycled and do not require alternative capacity. As discussed in section III. A. 7., some K069 wastes contain high levels of calcium sulfate. These wastes cannot be recycled. The Agency is not promulgating a treatment standard for calcium sulfate containing K069 wastes; these wastes will be subject to the "soft hammer" requirements.

The Agency proposed a treatment standard of "no land disposal" for K004, K008, K021, K025, K036, K060, K073 and K100 wastes and for wastewaters from F006, K022, K046, K061, K069, and K106, based on the belief that they are no longer being generated or are not being land disposed. Commenters noted that these wastes are being generated in the form of landfill leachate even though ongoing production processes may no longer produce the wastes. Also, these wastes may be present in contaminated ground water and, thus, may be generated during cleanup actions.

Because a "no land disposal" standard could hinder or preclude necessary and desirable collection and treatment of leachate and contaminated ground water, the Agency has not established standards for the wastewater components of the "no land disposal" wastes. In addition, the Agency is revising the schedule for the prohibition on land disposal and establishment of treatment standards (40 CFR 268.10) to move leachate from "soft hammer" wastes, contaminated ground water from "soft hammer" wastes, and certain "soft hammer" wastewater residues from treatment to the Third Third to avoid disruptive effects while standards are developed (see section III. C. 3. for further discussion).

For the non-wastewater forms of K004, K008, K021, K036, and K060 the "no land disposal" standard is being promulgated.

j. *Other Comments on Capacity Determinations.* Several commenters felt that available capacity for treating wastes in tank systems was underestimated because additional capacity could be brought on line quickly by vendors or put into service as on-site capacity. For example, one commenter disagreed with the variance provided to K071 waste because the BDAT technologies identified for K071 are simple chemical tank treatment processes (acid leaching, chemical oxidation, and sulfide precipitation), which could be supplied readily by vendors.

The Agency believes that because of the time necessary to construct such treatment systems and (in some cases) to satisfy permitting requirements, additional capacity cannot be brought on-line quickly and should therefore not be considered when analyzing available treatment capacity. In addition, as part of the TSDR Survey, facilities were asked to report any treatment processes planned to be operational (considering construction and permit time) by January 1992. Planned capacity reported in the TSDR Survey, and taken into

consideration in the Agency's capacity determinations, did not indicate that additional capacity that would change the capacity determinations promulgated today would be available in the near future.

Some commenters believe that the Agency's capacity analysis overestimated the national capacity to incinerate solids and sludges. Commenters stated that the Agency did not consider all necessary factors when determining solid/sludge incineration capacity. Factors cited as not considered included material handling restrictions, downtime for maintenance, storage restrictions, and siting and permitting difficulties for future incineration units. One commenter felt that the Agency overestimated the volume of waste requiring solid/sludge incineration capacity because pretreatment and volume reduction were not considered. The same commenter also felt that the Agency underestimated solid/sludge treatment capacity because liquid incineration capacity could easily be converted for solid/sludge incineration.

The Agency based its latest incineration capacity determination on the 1987 TSDR Survey database. When completing the TSDR Survey, the facilities were asked to consider downtime for maintenance and other factors when reporting the treatment capacity for existing and future units. Therefore, such factors should be reflected in the estimates of available solid/sludge incineration capacity. In addition, the TSDR Survey did request information on plans to change the types of capacity available (e.g., liquid to solid/sludge incineration) and this information is included in the estimates. Therefore, EPA disagrees with both of these comments.

Commenters expressed concern because the Agency's determinations of required treatment capacity did not take into account the volumes of waste that will be removed from surface impoundments undergoing clean closure. Therefore, the commenters felt that the Agency underestimated the volume of wastes requiring alternative treatment.

This issue is discussed earlier in this section with respect to K001 wood preserving wastes. Some information was provided by commenters on the volumes of wastes currently in surface impoundments at their facilities; however, for the reasons set out in the earlier discussion of K001, the Agency believes that both the timing of closures and the amount of material which will actually require incineration are

uncertain at this time, and therefore cannot be used in the capacity decision.

The new TSDR data have implications for "soft hammer" certifications. A "soft hammer" certification for a waste amenable to treatment by a method for which ample capacity exists will be critically examined by EPA and is more likely to be invalidated. Examples are wastes amenable to liquid injection incineration or to stabilization.

4. Alternative Capacity and Effective Dates for Solvent Wastes and California List Wastes

Using the new TSDR data, EPA reevaluated waste volumes requiring alternative capacity because of the Solvents final rule (51 FR 40572) and the California list final rule (52 FR 25760). The new analyses indicated significant changes in waste management practices and capacity, notably, significant increases in incineration capacity. Consequently, some national capacity variances are no longer necessary. Capacity variances are no longer needed for F001-F005 solvents generated by small quantity generators (i.e., generators of 100-1000 kilograms of hazardous wastes per month), CERCLA response actions, and RCRA corrective actions addressed in §§ 268.30(a) (1) and (2), with the exception of solvent-contaminated soils. Also, capacity variances are no longer needed for California list HOCs, with the exception of HOC-contaminated soils. BDAT for these wastes is incineration, and the new data indicate significant increases in incineration capacity, assuring adequate capacity for these wastes.

The May 17 notice proposed to terminate these national capacity variances as of the date of promulgation of the final First Third rule. Based on comments received, some of which point out the short comment period on the May 17 proposal necessitated by the statutory deadline, the Agency has decided to allow the capacity variances for certain solvent wastes to expire and to terminate the California list HOCs variance on November 8, 1988. The Agency believes that the three-month delay will not result in any adverse environmental effects and will permit generators of California list wastes, for which the variance is being terminated eight months earlier than expected, to arrange for appropriate treatment and disposal of their wastes, if they have not done so already.

5. National Variances from the Effective Date for Contaminated Soil and Debris

a. *Legal Authority.* Under RCRA sections 3004 (d)(3) and (e)(3), Congress provided that the land disposal

restrictions provisions for disposal of certain "contaminated soil" and "debris" from CERCLA 104 and 106 response actions and from RCRA corrective actions would not apply until 48 months from the enactment of HSWA. These provisions apply specifically to soil and debris contaminated with spent solvents, certain dioxin-containing wastes, and California list restricted hazardous wastes. November 8, 1988, therefore, is the applicable effective date established under RCRA sections 3004 (d)(3) and (e)(3) for CERCLA and RCRA corrective action contaminated soil and debris. Congress provided no such alternative statutory effective date for CERCLA and RCRA soil and debris contaminated with First Third (or Second Third) wastes. Thus, the statutory effective date for these wastes is the same as for any other hazardous waste which is included in the first one-third of the schedule—August 8, 1988. No commenter disagreed with this analysis. (See the May 17, 1988 proposed rule for a more detailed explanation of legal authority and other aspects of the proposed variance.)

An important factor in setting this later effective date for soil and debris from cleanup actions was Congress' evident acknowledgment that it would take extra time to develop treatment capacity for soils and debris contaminated with these wastes. Foreseeing this potential shortfall, Congress placed these wastes on an alternative schedule approximately the same as the one for the first group of wastes prohibited under section 3004(g). Restricted hazardous wastes are normally prohibited from land disposal as soon as the statutory deadline passes (RCRA section 3004(h)(1)). If, however, there is a lack of adequate alternative protective treatment, recovery, or disposal capacity to treat the wastes, the Agency may set an alternative effective date based on the earliest date on which such adequate capacity becomes available, not to exceed two years (RCRA section 3004(h)(2)).

b. *Soil and Debris Capacity Variance.* In today's rule, the Agency is granting a national capacity variance for certain contaminated soils for which BDAT is based on solids incineration.

A partial estimate of the amount of soil requiring solids incineration is shown below. These amounts represent the quantity of soils land disposed at RCRA facilities in 1986. The amount of soils generated by CERCLA response or RCRA corrective actions requiring solids incineration is not currently known.

- Solvent—26 million gal/yr.
- Dioxin—(none reported in 1986).

- California List HOCs (other than First Third wastes for which treatment standards were proposed)—4 million gal/yr.

- First Third (for which treatment standards were proposed)—12 million gal/yr.

EPA expects that all of the solids incineration capacity will be utilized as a result of other actions taken today, and therefore that there will be a lack of capacity for incineration of soils.

In the May 17, 1988 proposal, the Agency also requested comment on the advisability of applying the variance to debris contaminated with solvents, certain dioxins or HOCs above 1,000 ppm, as well as to debris contaminated with First Third wastes. Several commenters addressed this issue and all were in favor of including debris in the 2-year national capacity variances. The Agency agrees and, therefore, debris is included in the national variances along with contaminated soils generated from CERCLA response actions and RCRA corrective actions. Many commenters urged that the variance be broadened to apply to soils contaminated with solvent, dioxin and California list wastes other than those from CERCLA response and RCRA corrective actions. The Agency believes this to be precluded by the wording of the statute. See the May 17 proposed rule for a more detailed explanation.

The national capacity variance applies to soils and debris contaminated with spent F001-F005 solvents and F020-F023 and F026-F028 dioxins which result from a response action taken under CERCLA sections 104 or 106 or a RCRA corrective action. Soils and debris contaminated with California list HOC wastes which result from a response action taken under CERCLA sections 104 or 106 or RCRA corrective actions are also included in the variance. Such contaminated CERCLA and RCRA soils and debris are covered by the capacity variance until November 8, 1990—two years from the statutory effective date applicable to these wastes.

A national capacity variance is also being granted for soils and debris contaminated with certain First Third wastes for which the treatment standards are based on incineration; however, it is not limited exclusively to soils from CERCLA response and RCRA corrective actions. The variance applies to soils and debris contaminated with the following First Third wastes: K001, K015, K016, K018, K019, K020, K022, K024, K030, K037, K048-K052, K083, K086, K087, K101, K102, K103 and K104. Soils and debris contaminated with the specified First Third wastes receive a

variance that extends the effective date for the land disposal restrictions to August 8, 1990.

The effective dates for soil and debris established by today's final action have been summarized in the following table:

SUMMARY OF FINAL EFFECTIVE DATES

Restricted hazardous waste	Prohibition effective date in today's final rule
I. Solvent- and dioxin-containing soil and debris from CERCLA response or RCRA corrective actions.....	11-8-90
II. Soil and debris NOT from CERCLA response actions or RCRA corrective actions contaminated with less than 1% total solvents or certain dioxins.....	11-8-88
III. Soil and debris contaminated with California list HOCs from CERCLA response actions or RCRA corrective actions.....	11-8-90
IV. Soil and debris contaminated with California list HOCs NOT from CERCLA response actions or RCRA corrective actions.....	7-8-89
V. All soil and debris contaminated with First Third wastes for which treatment standards are based on incineration.....	8-8-90

The Agency acknowledges that granting a national capacity variance for contaminated soils is a policy choice. That is, EPA could have separated out some segment of CERCLA and RCRA corrective action soils for immediate prohibition instead of rescinding the variance for other HOC and solvent wastes requiring solids incineration. EPA did not pursue this course for several reasons. First, it would be difficult, if not impossible, to separate out a discrete segment of contaminated clean-up soils to fit the available treatment capacity. More importantly, the precise amount of CERCLA and RCRA corrective action soils to be generated over the next 24 months is not certain due to the unpredictable pace of clean-up actions, whereas the volume of other surface disposal wastes requiring solids incineration capacity is much better quantified. By rescinding variances for the wastes whose volume is better quantified, EPA is far more certain that the existing treatment capacity will actually be utilized. That is, EPA is not reserving scarce solids incineration capacity for contaminated soils that might never be generated, and is thus structuring these variances to make certain that scarce solids incineration capacity will actually be utilized.

With respect to soils contaminated with spent solvents, certain dioxins, and HOC wastes, only those that result from a response action taken under section

104 or 106 of CERCLA or a corrective action required under RCRA are included under this capacity variance. For all other soils contaminated with these wastes, an application for a case-by-case extension may be submitted if adequate alternative capacity cannot reasonably be made available by the applicable effective date.

c. Definition of "Soil" and "Debris". For the purpose of determining whether a contaminated material is subject to this national variance, some definition of the terms "soil" and "debris" is needed. Soil is defined as materials that are primarily geologic in origin such as silt, loam, or clay, and that are indigenous to the natural geological environment. In certain cases soils will be mixed with liquids, sludges or debris. The Agency solicited comment on appropriate methods for determining whether such mixtures should be considered a soil waste.

Several commenters addressed this issue; they generally favored the inclusion of such mixtures in the capacity variance. However, they did not offer practical methods for making a generally applicable determination on what these mixtures should be. Therefore, the Agency will make such determinations on a case-by-case basis. As proposed, however, soils do not include wastes withdrawn from active hazardous waste management units, such as impoundment dredgings. Such wastes are sludges, not soils, and EPA has evaluated the volume of these sludges in its capacity estimates (based on TSDR survey reports), and determined that sufficient capacity exists for these wastes.

The variance obviously does not apply to materials produced as a result of the deliberate addition of soil or dirt to a restricted hazardous waste. Such a practice is forbidden by the provisions of the dilution prohibition (40 CFR 268.3).

For the purpose of determining whether a contaminated material is subject to this national variance, debris is defined as materials that are primarily non-geologic in origin such as grass, trees, and shrubs, and man-made materials such as concrete, clothing, partially buried whole or crushed empty drums, capacitors, and other synthetic manufactured items. This may also include geologic materials identified as not indigenous to the natural geological environment at or near the site or identified as indigenous rocks exceeding a total size that, based on engineering judgement, will affect performance of available treatment technologies.

d. Notes on Drafting of the Regulatory Language. To implement these changes in the various capacity variances, EPA is amending the regulatory language in §§ 268.30 through 268.33. With respect to the solvent wastes covered in § 268.30, the Agency is adding a new § 268.30(c) dealing with contaminated soil and debris from CERCLA response and RCRA corrective actions. This provision replaces existing § 268.1(c)(3).

New § 268.30(b) groups all the solvent wastes having a November 8, 1988 prohibition effective date. As noted above, new § 268.30(c) sets forth the 1990 effective date for CERCLA response and RCRA corrective action contaminated soil and debris. Also added is language indicating that if these wastes are to be disposed in landfills or surface impoundments until the prohibition effective date, the landfill or impoundment unit must meet the section 3004(o) minimum technology requirements (see 53 FR 11769).

The Agency is making similar changes in §§ 268.31, 268.32, and 268.33 to reflect the revised effective dates. The language in § 268.33(c) indicates that the 1990 effective date applies to all soils contaminated with First Third wastes with treatment standards based on incineration.

I. Recyclable Materials Used in a Manner Constituting Disposal

In the May 17 proposal, EPA proposed to amend § 266.20 of the regulations to provide that hazardous waste-derived products that are recycled by being placed on the land must meet the applicable treatment standard for each waste that they contain as a condition for remaining exempt from all other hazardous waste regulation (53 FR 17605). The Agency reasoned that conditioning the existing regulatory exemption in this way would effectuate the land disposal restrictions statutory provisions by requiring that hazardous wastes comply with applicable treatment standards before they are recycled by being placed on the land. Most commenters supported this proposal, a number urging the Agency to end the regulatory exemption altogether. Persons producing fertilizers from waste K061, however, maintained that their fertilizers were safe to apply and were similar in composition to other zinc containing fertilizers not produced from hazardous wastes. They therefore urged the Agency to retain the regulatory exemption or to reclassify the fertilizers. Finally, a few commenters argued that hazardous secondary materials that are recycled by being placed on the land are

not wastes at all because they are not being "discarded".

EPA has decided to finalize the proposed rule with respect to hazardous waste derived products that are placed on the land, except that EPA is not taking any action with respect to fertilizers that use waste K061 as an ingredient (so that such fertilizers will remain exempt from regulation). EPA is conditioning the regulatory exemption for the reasons stated in the proposal, most particularly because the land disposal restrictions statutory provisions indicate that wastes are not to be placed on the land until they have been pretreated to meet the standards EPA established pursuant to section 3004(m). Where a waste-derived product is produced from more than one prohibited waste, the waste-derived product would have to meet the treatment standard for each hazardous waste that it contains, and if there are different treatment standards for common constituents, then the "product" would have to meet the most stringent of those standards.

EPA also solicited comment on an appropriate tracking system for hazardous waste-derived products to document that these materials meet the applicable treatment standards. Hazardous wastes sent to recycling facilities for ultimate use in waste-derived products that are to be placed on the land are already subject to regulation under section 268.7 (as well as the rest of subtitle C), and so persons shipping such wastes already must notify the recycler that the wastes are prohibited (§§ 268.7(a) and 266.21). EPA has decided, however, that once the recycler produces a waste-derived product that meets the treatment standard, the recycler is not required to notify the receiving facility that it (the receiving facility) is receiving a hazardous waste. The ultimate user of the hazardous waste-derived product is not a normal disposal facility, but rather operates as a commercial entity. As such, this entity is not a meaningful repository of a treatment facility's (i.e., the recycler's) certification and tracking documents prepared pursuant to § 268.7(b). Accordingly, EPA has decided that, instead of the recycler submitting information to the ultimate user, all of the § 268.7 information is to be submitted to the appropriate EPA Regional office or State authority. The only difference in reporting requirements would be that the recycling facility also keep records of the name and location of each entity receiving the hazardous waste-derived product. In this way, the appropriate

regulatory authority will be on notice of the location of each shipment and that the shipment has met the applicable treatment standards for the hazardous wastes contained within the waste-derived product.

EPA has further determined that fertilizers produced from hazardous waste K061 should remain exempt from all regulation for the present time. For a further discussion of this determination, see section III. A. 7.

EPA also wishes to take this opportunity to clarify, in response to comment, that the underlying regulatory provision § 266.20, does not apply to materials, such as cement or aggregate, that are not produced from hazardous wastes. This is true even for cement or aggregate produced in a furnace that is powered in whole or in part by hazardous waste fuel. Section 266.20 applies when a process "use(s) hazardous wastes as ingredients" to produce a product that is then applied to the land (50 FR 628; January 4, 1985). To be covered by the rule, a product must "contain" the hazardous waste.

Materials such as cement or aggregate that are produced from raw materials, but come from processes that may be fired by hazardous waste fuels, are consequently not covered by this provision. They do not use hazardous waste as ingredients. Section 266.20 thus applies when hazardous wastes are incorporated directly into a product which is to be applied to the land; hazardous wastes recycled in this way thus really are being disposed. There is no such direct link with disposal when hazardous wastes are used to power a process that may be producing a material that will be used on the land. Products produced in processes that use hazardous waste fuels thus are not covered by section 266.20 unless the process also uses hazardous wastes as ingredients in a product destined for land application.

Finally, EPA responds briefly to those commenters alleging that materials used in a manner constituting disposal are not being discarded and therefore are not solid wastes. As the Agency has explained many times, use constituting disposal involves as a practical matter the disposal of wastes. The wastes are being gotten rid of by placing them directly on the land (see e.g., 53 FR 521-22; January 8, 1988). The indications that Congress meant to control this recycling practice under RCRA are legion. [See RCRA section 3004(1) (use of hazardous waste as dust suppressant or for road treatment is prohibited); H.R. Rep. No. 198, 98th Cong. 1st Sess. at 46, 67-68 (hazardous waste-derived products that

are placed on the land are to be the special object of EPA scrutiny under the Subtitle C program)]. To say that Congress did not intend to control these use constituting disposal situations under RCRA is to say that Congress had no intention of controlling such damage incidents as the Times Beach dioxin spreading incident where a group of communities were rendered uninhabitable as a result of use of a distillation bottoms mixed with used oil as a dust suppressant. No credible reading of the statute would authorize this type of conduct. Accordingly, EPA views all use constituting disposal recycling activities involving hazardous secondary materials as within its jurisdiction under RCRA subtitle C.

J. Reclamation of Indigenous Waste

In the proposed rules, the Agency indicated that where it was proposing treatment standards based on some type of metal recovery technology, it might not write treatment standards for the wastes generated by the metal recovery technology (for example, for the slag generated by remelting hazardous waste K069, emission control dust/sludge from secondary lead smelting). (53 FR 11762). The Agency indicated that this result could follow from application of the so-called "indigenous" principle, which states that certain wastes destined for material recovery in industrial furnaces can be considered to be indigenous to those furnaces and so cease to be solid wastes at the point they are actually placed in the furnace. (53 FR 11753). The particular waste codes that might be affected by application of this principle are K061 and K069.

Although EPA has discussed this concept for some time, and most commenters have agreed that some type of indigenous principle is desirable and perhaps legally required, EPA has not fixed the precise scope of the concept. EPA proposed a definition in the May 6, 1987 rule dealing with emission standards for boilers and industrial furnaces, and plans shortly to repropose a somewhat different meaning for the term as part of a reproposal of the boiler and industrial furnace standards. This proposed revision would evaluate both the similarity of the process in which the waste was originally generated and the one in which it is being recovered, and would also evaluate the similarity of the waste from the standpoint of identity and concentration of Appendix VIII hazardous constituents, and the raw material that it is replacing.

Based on the information now before it, EPA believes that K061 and K069

wastes would be indigenous to metal recovery processes. K061 wastes are generated by the same type of furnace that recovers the K061 dust, furnaces from both the steel industry and the zinc smelting industry are part of the same generic SIC code 331, and the dusts are similar in composition to the virgin ores customarily smelted in zinc smelting furnaces. Not only are the zinc levels the same as found in virgin ores (15% minimum), the other toxic metals (lead and cadmium) are also present in zinc ores in comparable concentrations. Hazardous waste K069 is even more clearly indigenous to the secondary lead smelting process since it is generated directly by the secondary lead process and contains no toxic constituents not already present in the normal feed material to the secondary lead smelting furnace.

It therefore appears to the Agency that these two hazardous wastes would be considered to be indigenous to the respective metal recovery process under any of the definitions that EPA is considering. Because it appears at this time to be clear that under any ultimate regulatory regime these wastes would be indigenous, then the derived from rule would not apply to any of the wastes generated by the metal recovery process. Consequently, the treatment standards EPA is establishing today for K061 and K069 do not apply to wastes from the metal recovery processes because, by virtue of the indigenous principle, the derived from rule would not apply to these processes (i.e., the residuals from such processes would not be derived from a hazardous waste).

K. Nonrulemaking Procedures for Site-Specific Variances from the Treatment Standard

In the November 7, 1986 final rule (51 FR 40572), the Agency established a procedure for obtaining a variance from the applicable treatment standard (40 CFR 268.44). Use of this variance was envisioned in cases where restricted hazardous wastes differ significantly from the wastes evaluated in setting treatment standards and, as a result, cannot be treated to meet the applicable treatment levels or where the technology used to establish the treatment level is not appropriate to the waste. The request for this treatability variance must demonstrate, among other things, that the waste is significantly different from the wastes evaluated in establishing the treatment standard and cannot be treated in compliance with the applicable treatment standard. Prior to today's final rule, the section 268.44 variance procedures were available only through a rulemaking that would amend

the regulatory treatment standards each time a variance was granted.

Today's final rule amends § 268.44 by adding procedures for requesting a site-specific variance from the treatment standard. As explained below, opportunity will be provided for public comment on site specific variances.

1. Background

On September 5, 1986, the Agency published a Notice of Availability of Data (51 FR 31783). The notice requested comments on whether EPA should have a variance from the generally applicable treatment standards, and the procedures under which such variances should be processed. Commenters generally supported allowing variances from the treatment standard. Furthermore, in the context of today's modification, some commenters, while recognizing EPA's authority to grant variances through rulemaking procedures, supported the use of nonrulemaking procedures. Because there was insufficient time to fully consider all issues relating to the variance procedure before the November 7, 1986 rule was promulgated, only a procedure for obtaining a variance from the treatment standard which required rulemaking was established (51 FR 40572); however, the Agency noted its intention to raise the nonrulemaking variance issue in the future.

The Agency requested comment on several modifications of the variance procedure in the December 11, 1986 California list land disposal restrictions proposal (51 FR 44729). Specifically, comment was requested on the advisability of allowing nonrulemaking procedures and on the applicability of such procedures. Comment was also requested on establishing a deadline for variance applications, on provisions for public comment, and on the criteria for granting nonrulemaking variances.

Nonrulemaking variance procedures were again presented for public comment in a Notice of Availability of Data published on August 12, 1987 (52 FR 30038). It was noted that the July 7, 1987 California list final rule (52 FR 25780) set forth a treatment method equivalency petition (40 CFR 268.42) that need not be processed through a formal rulemaking in cases where the relief sought would not have generic applicability and effect. In the August 12 Notice, EPA solicited further comment on the advisability of applying the same reasoning to the site-specific variance from the treatment standard so that formal rulemaking procedures are not mandated.

2. Major Comments

The Agency received several comments addressing various aspects of establishing a nonrulemaking procedure for site-specific variances from the treatment standard. The majority of commenters supported the establishment of nonrulemaking procedures; their arguments were based on the need for streamlined procedures so that variances may be reviewed in a timely manner. Several commenters suggested that a site-specific nonrulemaking variance could be included in the permitting process, thus offering an opportunity for public comment. One commenter cited the Supreme Court's decision in *Chemical Manufacturers Association v. NRDC*, 470 U.S. 116 (1985), as support for EPA's authority to use a streamlined variance procedure. On the other hand, two commenters expressed concerns about utilizing nonrulemaking procedures. One commented that EPA had the authority to grant variances from the treatment standard, but stated that all petitions must be subject to public review and comment before they are granted. The other commenter strongly opposed the Agency's proposed approach, arguing that nonrulemaking procedures violate RCRA sections 3004(m), 7004, and 7006.

3. Agency Response and Summary of Today's Approach

The Agency believes that nonrulemaking procedures for the variance from the treatment standard are not precluded by the statute in cases where such a determination is site-specific, having no generic applicability and effect. The Agency is taking this position for a number of reasons. First, since a generator-specific treatability variance would not be of general applicability and effect, such administrative action would not be a rule requiring utilization of the Administrative Procedure Act informal rulemaking procedures. Second, to the extent that section 3004(m) creates an independent requirement of rulemaking procedures, this requirement is satisfied by the initial rulemaking in which the BDAT treatment standard is established. In this regard, the Agency notes that there are numerous instances where a statute requires that a generally applicable standard be established by regulation, but that variances from that standard need not be established via rulemaking. Under RCRA, for example, EPA must use rulemaking to establish generally applicable standards for treatment, storage, and disposal facilities (RCRA section 3004(a)). EPA,

however, has also established variances from certain of these generally applicable requirements which can be granted by means other than rulemaking—for example, the variance from the secondary containment requirement for hazardous waste tanks is implemented by nonrulemaking procedures. (See § 264.193 (g) and (h)). Under the Clean Water Act, EPA is required to establish generally applicable effluent limitation guidelines and standards by regulation, but for years has had in place a fundamentally different factors variance from these standards that was implemented by nonrulemaking procedures. This Fundamentally Different Factors variance is now codified in the 1987 amendments to the Clean Water Act, section 301(n). In the land disposal restrictions rules themselves, EPA adopted nonrulemaking procedures for processing demonstrations of equivalency to a specified BDAT method. (See § 268.42(b)).

In fact, it appears that at least in RCRA, where Congress meant to preclude the Agency from using nonrulemaking procedures when granting variances, it said so explicitly. (See RCRA section 3001(f) that mandates use of informal rulemaking procedures for processing delisting petitions.) In other contexts, most notably RCRA sections 3004(o)(2) and 3005(j) (2), (3), (4), and (13), Congress itself explicitly authorized nonrulemaking procedures for granting other types of variances. It thus appears to the Agency that the brief reference to "regulations" in section 3004(m)(1) does not preclude the use of nonrulemaking procedures to grant individual variances to an already promulgated treatment standard.

Therefore, today's final rule promulgates modifications to 40 CFR 268.44 that allow a site-specific variance from the treatment standard, having no generic applicability and effect, to be granted through nonrulemaking procedures. The Agency agrees as a matter of policy to allow opportunity for public notice and comment prior to granting a nonrulemaking variance from the treatment standard. Because circumstances under which one might apply for a site-specific variance vary, vehicles for public comment will be specified on a case-by-case basis.

The Agency received no requests for variances from the treatment standards promulgated in the solvents and dioxins final rule or the California list final rule. It is difficult to predict how many requests for variances from the treatment standard will be received as a result of today's final rule. Therefore,

the Agency is not establishing a specific format for the variance or specifying vehicles for providing public comment at this time. Since the goal of granting site-specific variances from the treatment standard through nonrulemaking procedures is to streamline the process, the Agency will likely provide for public comment through existing public participation vehicles such as permit applications or modifications, CERCLA Remedial Investigation/Feasibility Study documents, or other relevant procedures as appropriate. In cases when there is no existing proceeding which provides the opportunity for public participation, EPA will provide opportunity for notice and comment through publication in local newspapers, by radio broadcast, or through other media, similar to the variance procedures already in place under § 260.33. If necessary, the Agency will issue guidance at a later date on the format for an application and will specify procedures for public comment.

The criteria by which a nonrulemaking site-specific variance from the treatment standard will be evaluated remain the same as those previously promulgated. The demonstration should be made that the waste is significantly different from the wastes evaluated in establishing the treatment standard and cannot be treated in compliance with the applicable treatment standard. On a site-specific basis, it may be possible to determine that BDAT treatment is inappropriate for a particular waste stream. For example, incineration of large volumes of contaminated soil under certain site-specific conditions may be found to be inappropriate treatment. Such an assertion should be supported by analytical data and treatability studies to the greatest extent possible. Each request for a variance from the treatment standard must include a statement signed by the authorized representative of the applicant certifying that the information is correct.

The applicant must apply to the Assistant Administrator for the Office of Solid Waste and Emergency Response, addressing the criteria contained in § 268.44. The authority for granting site-specific variances to the treatment standard may be delegated to the Regional Administrator in the future, at which time the application would be made to the Regional Administrator in the region where the applicant is located.

The Assistant Administrator (or Regional Administrator, if authority is delegated) will evaluate the application

and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the applicant is located. The Assistant Administrator (or Regional Administrator, if authority is delegated) will accept comment on the tentative decision, usually for 30 days. Public hearings may be held upon request or at his discretion. A final decision will be made after evaluation of comments.

L. Rationale for Immediate Effective Date

The regulations promulgated today will be effective immediately except where the Agency has specified a national variance or otherwise specified an alternative effective date. HSWA requires that today's regulations become effective on or before the August 8, 1988 effective date of the restrictions on the first one-third of the wastes scheduled pursuant to RCRA section 3004(g)(4)(A). If the Agency fails to promulgate regulations for any of these wastes by the statutory effective date, the restrictions on disposal of the waste in a landfill or surface impoundment, stipulated in section 3004(g)(6)(A) take effect automatically on August 8, 1988. If the Agency has not promulgated treatment standards for any scheduled waste by May 8, 1990, that waste is prohibited from all forms of land disposal unless a generator has been granted an extension of the effective date (either a national variance or a case-by-case extension) or a "no migration" finding has been made. Hence, August 8, 1988, is the latest date for EPA to promulgate regulations that will prevent the "soft hammer" in section 3004(g) from falling for all First Third wastes. Section 3004(h) requires that regulations established under sections 3004 (d), (e), (f), or (g) be effective immediately upon promulgation. Furthermore, section 3004(m) specifies that regulations setting treatment standards must have the same effective date as applicable regulations established under sections 3004 (d), (e), (f), or (g). For today's regulations which set treatment standards and are promulgated under section 3004(g), this date will be August 8, 1988. Since the statute clearly states that the regulations implementing section 3004(g) must go into effect on or before August 8, 1988, in order to prevent the "soft hammer" from falling, EPA finds that good cause exists under section 3010(b)(3) to have an immediate effective date. For the same reason, EPA finds that good cause also

exists under section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. section 553(d)(3), to waive the requirements that regulations be published at least 30 days before the effective date.

IV. Modifications to the Land Disposal Restrictions Framework

Today's final rule does two things. First, it promulgates the Agency's approach to restricting the land disposal of First Third wastes, presenting the conditions under which land disposal of these wastes may be continued. Second, it modifies the existing framework of the Land Disposal Restrictions Program, as first promulgated on November 7, 1986 (51 FR 40572) and subsequently modified in the July 8, 1987 California list final rule (52 FR 25760). Unless otherwise specified, these modifications will apply to all restricted wastes. This section of today's preamble summarizes these modifications and refers to more detailed discussions in other sections of this preamble.

A. General Waste Analysis (§§ 264.13 and 265.13)

The Agency is promulgating modifications to §§ 264.13 and 265.13 to reflect provisions for the treatment of "soft hammer" wastes in surface impoundments. The framework promulgated November 7, 1986 provided for an exemption allowing treatment of restricted wastes in section 3005(j)(11) surface impoundments, provided that residuals that do not meet the treatment standard are removed annually. As discussed in section III.C.4., this exemption is extended to allow for wastes subject to the "soft hammer" provisions (i.e., First Third wastes for which no treatment standard has been established). EPA is also making certain nonsubstantive modifications to make these sections more readable.

B. Operating Record (§§ 264.73 and 265.73)

The Agency is modifying §§ 264.73 and 265.73 to require retention of the § 268.8 demonstration and certification, i.e. the certifications applicable to "soft hammer" wastes. EPA is also requiring facilities to retain the new tracking notice required under § 268.7 for generators sending "soft hammer" wastes to receiving facilities, and for treatment facilities sending "soft hammer" wastes to a disposal facility. The "soft hammer" notice and certification is discussed further in sections III.B.2. and III.C.3. respectively.

C. Recyclable Materials Used in a Manner Constituting Disposal (§ 266.20)

The Agency is amending § 266.20 to require that hazardous waste-derived products whose placement on the land was previously exempt from Federal regulation must now meet the applicable Subpart D treatment standard (or 3004(d) prohibition levels) prior to such placement. EPA is, however, allowing for one exception to this requirement; namely, K061-derived fertilizers. See section III. I. for a discussion of the Agency's determination concerning this amendment.

D. Purpose, Scope, and Applicability (§ 268.1)

The Agency is modifying § 268.1 to include the "soft hammer" wastes in the applicability of the land disposal restrictions, and to allow the disposal of such wastes in landfill and surface impoundment units meeting the minimum technological requirements provided such wastes are the subject of a valid certification under § 268.8. EPA is also clarifying the applicability of Part 268 treatment standards to prohibited wastes generated from CERCLA response actions.

E. Treatment in Surface Impoundment Exemption (§ 268.4)

The modifications to the requirements of § 268.4 reflect the special conditions for allowing this exemption to apply to First Third wastes for which no treatment standards have been established. Certain nonsubstantive modifications have also been made to improve the readability of the section. The conditions relating to the disposal of "soft hammer" wastes are discussed in section III.C.4.

F. Case-by-Case Extensions (§ 268.5)

The modification to § 268.5 reflects the Agency's new interpretation of RCRA section 3004(h)(4), that wastes subject to a national or case-by-case extension of the effective date, if disposed in a landfill or surface impoundment, must be disposed in a unit that meets the minimum technological requirements. EPA's earlier interpretation was that Congress intended such wastes to be disposed in a facility that meets the minimum technological requirements of 3004(c) (applicable only to new, replacement, or lateral expansion units). The discussion for this modification is found in section III.D.

G. "No Migration" Petitions (§ 268.6)

As discussed in section III.F., the Agency is modifying the existing

requirements for petitioning EPA for a "no migration" exemption under § 268.6. This modification promulgates additional demonstrations required in a "no migration" petition, and certain other requirements on the owner or operator of a waste management unit that is subject to a "no migration" exemption.

H. Testing and Recordkeeping (§ 268.7)

The modifications to § 268.7 extend the notification and certification requirements to include the First Third wastes, including a new notification for "soft hammer" wastes. EPA is also applying the recordkeeping requirements of this section to treatment and storage facilities not previously included in the "cradle-to-grave" paper trail, including an additional change addressing wastes that may be land disposed under an extension, exemption, or variance. Also, a 5-year record retention period is being promulgated. The discussion for these proposed modifications is found in Section III. B.

Also, as discussed in section III.I., the Agency is modifying the tracking system to account for zinc-containing fertilizers which use K061 as an ingredient, which EPA has exempted from regulation.

Testing requirements for wastes in § 268.43 (i.e., wastes for which the treatment standards are expressed as concentration levels in the waste, rather than in the waste extract) are being promulgated. And finally, other nonsubstantive modifications are being made to improve the readability of this section.

I. Landfill and Surface Impoundment Disposal Restrictions (§ 268.8)

The Agency is promulgating a new section 268.8 which addresses the prohibition on disposal of First Third wastes for which treatment standards have not been established. An extensive discussion in section III.C. presents the Agency's approach to implementing RCRA section 3004(g)(6)(A), which is applicable to the disposal of such wastes in landfills and surface impoundments, and also promulgates EPA's approach to the type of information which must be supplied and certified prior to such disposal.

J. Identification of Wastes to Be Evaluated By May 8, 1990 (§ 268.12)

As discussed in Section III.C.3., the Agency is amending § 268.12 to move certain First Third wastewater residuals from treatment for which wastewater treatment standards have not been set into the Third Third. Similarly, the

Agency is also moving "soft hammer" leachate and ground water contaminated with "soft hammer" wastes into the Third Third. This action is taken due to the relatively low intrinsic hazard of these wastes and to avoid discouraging substantial treatment of "soft hammer" wastes.

Also, as discussed in section III.A.4., the Agency is moving one class of First Third wastes to the third third of the schedule—mixed hazardous/radioactive wastes. EPA emphasizes that this action only affects First Third wastes mixed with radioactive wastes. Waste mixtures containing spent solvents, dioxins and California list wastes are subject to the applicable land disposal restrictions.

K. Determination as to the Availability of the Two-Year Nationwide Variance for Solvent Wastes Which Contain Less Than 1% Total F001 F005 Solvent Constituents (§ 268.30)

In a June 4, 1987 technical correction notice (52 FR 21010) to the November 7, 1986 final rule prohibiting land disposal of certain spent solvent and dioxin-containing hazardous wastes, EPA promulgated an amendment to § 268.30(a)(3) reclarifying that solvent wastes that are prohibited in the hands of their initial generator—i.e., that are not subject to any applicable variance—cannot be permissibly land disposed until treated to meet the section 268.41 treatment standards. This principle applies to all residues from treatment (unless they are part of a different treatability group for which EPA has determined that no treatment capacity exists (see 52 FR 21012; June 4, 1987 and also 52 FR 22356–22357; June 11, 1987)). Because questions have been raised regarding the policy basis for the action, and because the underlying principle is an important one which warrants the fullest consideration, EPA repropose amended § 268.30(a)(3) as part of the April 8 proposal (53 FR 11770).

EPA did not receive comment on this proposal and thus is promulgating the rule as proposed for the reasons stated in the April 8, proposal. In repropromulgating regulatory language, the Agency never withdrew its existing regulation. The Agency notes, however, that its earlier actions on this issue were prospective only (see 52 FR 21010, stating that the revisions are effective on June 4, 1987). Thus, the June 4, 1987 revisions to § 268.30(a)(3) have no applicability to any certifications made before that date or to any treatment residues land disposed before that date (see 52 FR 21012, June 4, 1987 (item # 16); *id.* at 21017 (item # 62)).

L. Waste Specific Prohibitions (§§ 268.30, 268.31, 268.32, and 268.33)

Sections 268.30, 268.31, and 268.32 are being modified to reflect the reinterpretation of RCRA section 3004(h)(4), pertaining to the disposal of restricted wastes granted an extension of the effective date, as discussed in Section III.D. Also § 268.32 is changed to rescind the previously granted national variance for California list halogenated organic compounds. For a detailed discussion of this rescission, see Section III.H. Although EPA is republishing certain other language from these regulations, this is for the readers convenience and is not intended to reopen these provisions for judicial review (nor did EPA solicit or receive any comment on these provisions).

Section 268.33 promulgates the actual prohibitions on the land disposal of First Third wastes (wastes listed in § 268.10) for which EPA has established treatment standards, and also establishes effective dates based on the availability of capacity to treat these wastes. Section III.A. describes the development of these treatment standards, and section III.C. presents the capacity data and assumptions on which the effective dates are based. Section 268.33(f) promulgates the prohibitions placed on "soft hammer" wastes, as discussed in section III.C.

It should be noted that the schedules for wastes K019 and K025 (Second Third wastes listed in § 268.11) have been accelerated to include these wastes in the First Third. K100 (a Third Third waste listed in § 268.12) is also included in the First Third.

M. Treatment Standards (§§ 268.40, 268.41, 268.42, and 268.43)

Treatment standards, expressed as concentration levels in both the waste (§ 268.43, as expressed in a new Table CCW) and in a waste extract developed by using the TCLP (§ 268.42), are promulgated by amendments to Subpart D. The existing treatment standard as a specified method (incineration) for certain California list halogenated organic compounds is being modified to allow for burning in industrial boilers or furnaces (§ 268.42). Also, EPA is modifying the F001–F005 treatment standard for methylene chloride in wastewaters generated by the pharmaceutical industry. The new treatment standards are discussed in section III.A.

N. Variance from the Treatment Standard (§ 268.44)

Today's final rule promulgates modifications to 40 CFR 268.44 that

allow a site-specific determination to grant a variance from the treatment standard having no generic applicability and effect to be made by nonrulemaking procedures. A detailed discussion of this approach is found in section III.K.

O. Storage Prohibition (§ 268.50)

Only a slight modification to the existing storage prohibition in § 268.50 is promulgated to account for the Agency's interpretation of RCRA section 3004(j), as applicable to "soft hammer" wastes which are the subject of a certification under § 268.8. This interpretation is presented in section III.C.6. of this notice.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003 although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924 (d) through (k), and (m)). Therefore, it has been added to Table 1 in 40 CFR 271.1(j), which

identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section. Table 2 in § 271.1(j) is modified to indicate that this rule is a self implementing provision of HSWA for the Land Disposal Restrictions for the First Third of Scheduled Wastes.

B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see section 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. State program modifications must be made by July 1, 1991, if only regulatory changes are necessary or July 1, 1992, if statutory changes are necessary. These deadlines can be extended in exceptional cases (see § 271.21(e)(3)).

States with authorized RCRA programs may have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these standards in their applications. However, the State must modify its program by the deadlines set forth in § 271.21(c). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. Section 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

The amendments being promulgated today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) may continue to do so without seeking authority to administer these amendments. However, a State desiring to implement Part 143 and to receive authorization to grant exemptions from the land disposal restrictions must demonstrate that it has the requisite authority to administer sections 3004 (f) and (g) of RCRA. The conditions under which such authorization may take place are summarized in section C. A further discussion must be found in the July 15, 1985 final rule 50 FR 28728.

C. State Implementation

State implementation of today's rule is affected by the following four aspects of the framework established for the land disposal restrictions (51 FR 40572).

1. Under Part 268, Subpart C, EPA is promulgating land disposal restrictions for all generators, treaters, storers, and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under Part 268, EPA is granting two-year national variances from the land disposal restrictions effective date for certain wastes, based on a lack of alternative treatment or recovery capacity. In addition, case-by-case extensions of the effective date may be granted for up to one year (renewable for one additional year) to specific applicants lacking adequate alternative capacity.

The Administrator of EPA is solely responsible for granting variances to the effective dates because capacity determinations must be made on a nationwide basis. In addition, RCRA section 3004(h)(3) specifies that the Administrator will grant or deny case-

by-case extensions, after consulting the affected States, on the basis of national concerns; therefore, States cannot be authorized for this aspect of the program.

3. Under § 268.44, the Agency may grant waste-specific or site-specific variances from treatment standards in cases where it can be demonstrated that the treatment standard is inappropriate for the waste or the wastes cannot be treated to specified levels or treated by specified methods. The Agency is solely responsible for granting such variances since the result of such an action may be the establishment of new waste treatability groups applicable to all wastes meeting the new criteria. Therefore, this aspect of the program is not delegated to the States. Similarly, the authority to grant nonrulemaking variances is retained by the EPA.

4. Under § 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous. States which have the authority to impose restrictions may be authorized under RCRA section 3006 to grant petitions for exemptions from the restrictions. Decisions on site-specific petitions do not require the national perspective required to restrict wastes or grant extensions. However, the Agency is planning to propose an interpretation of the "no migration" language in the Federal Register for public comment. Because of the controversy surrounding the interpretation of the statutory language, and the potential for changes in policy, EPA will be handling "no migration" petitions at Headquarters, though the States may be authorized to grant these petitions in the future. The Agency expects to gain valuable experience and information from review of "no migration" petitions which may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish notice of the Agency's final decision on petitions in the Federal Register.

VI. Effect of the Land Disposal Restrictions Program on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the land disposal restrictions program, some generators might switch from land disposal of restricted First Third wastes to discharge to publicly-owned treatment works (POTWs) in order to avoid

incurring the costs of alternative treatment. In shifting from land disposal to discharge to POTWs, an increase in human and environmental risks could occur. Also as a result of the land disposal restrictions, hazardous waste generators might illegally discharge their wastes to surface waters without treatment, which could cause damage to the local ecosystem and potentially pose health risks from direct exposure or bioaccumulation.

Some generators might treat their wastes prior to discharging to a POTW, but the treatment step itself could increase risks to the environment. For example, if incineration were the pretreatment step, metals and other hazardous constituents present in air scrubber waters could be discharged to surface waters. However, the amount of First Third waste shifted to POTWs would be limited by such factors as the physical form of the waste, the degree of pretreatment required prior to discharge, and State and local regulations.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act (MPRSA)

Management of some First Third wastes could be shifted from land disposal to ocean dumping and ocean based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land based treatment, disposal, and transportation, this option could become an attractive alternative. In addition, ocean-based disposal could become attractive to the regulated community if land-based treatment were not available.

Although there may be economic incentives to manage restricted First Third wastes by ocean dumping and ocean-based incineration, both technologies require permits, which could be issued only if technical requirements (e.g., physical form and heating value) and MPRSA environmental criteria (e.g., constituent concentrations, toxicity, solubility, density, and persistence) were met. MPRSA requires that nine specific factors, including the availability and impacts of land based disposal alternatives, be considered before permits can be issued for ocean disposal.

C. Air Emissions Regulated under RCRA

Some treatment technologies applicable to First Third wastes could result in cross-media transfer of hazardous constituents to air. For example, incineration of metal-bearing wastes could result in metal emissions to air. Some constituents, such as

chromium, can be more toxic if inhaled than if ingested. Therefore, it might be necessary to issue regulatory controls for some technologies to ensure they are operated properly.

The Agency has taken several steps to address this issue. EPA has initiated a program to address metal emissions from incinerators. It has also initiated two rule-makings under section 3004(n) to address air emissions from other sources. The first rule-making will address emissions from equipment such as pumps, valves, and vents from units processing concentrated organic waste streams. The second rule-making will address other sources of air emissions, such as tanks and waste transfer and handling.

VII. Regulatory Requirements

A. Regulatory Impact Analysis

1. Purpose

The Agency estimated the costs, economic impacts, and benefits of today's final rule. This analysis is required for "major" regulations as defined by Executive Order No. 12291. (See the discussion of E.O. No. 12291 below.) The Agency is also required under the Regulatory Flexibility Act to assess small business impacts resulting from the proposed rule. The cost and economic impact estimates serve, additionally, as measures of the practical capability of facilities to comply with the proposed rule.

The results indicate that today's final rule is a major rule. This section of the preamble discusses the results of the analysis of the final rule as detailed in the Regulatory Impact Analysis (RIA) for the final rule. The RIA is available in the public docket.

2. Executive Order No. 12291

Executive Order No. 12291 requires EPA to assess the effect of proposed Agency actions and alternatives during the development of regulations. Such an assessment consists of a quantification of the potential costs, economic impacts, and benefits of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order No. 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis (RIA) for major rules. Major rules are defined as those likely to result in:

- An annual cost to the economy of \$100 million or more; or
- A major increase in costs or prices for consumers or individual industries; or

- Significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has prepared an RIA and has concluded that the final rule is a major rule with an annual cost to the economy of \$907-\$962 million.

3. Basic Approach

EPA is proposing to set treatment standards for a subset of the First Third F and K wastes and to let "soft hammers" fall on the remaining First Third wastes. The "soft hammer" provisions place restrictions on the land disposal of First Third wastes for which no treatment standards have been set by August 8, 1988. The "soft hammer" provisions will be in effect until prohibitions on land disposal ("hard hammers") fall (on May 8, 1990) or for a shorter period if treatment standards are promulgated. The possible effects of prohibitions on land disposal of wastes and of later extensions of the effective date were not examined as part of this analysis. The "soft hammer" provisions are discussed in greater detail in section III. C. of this preamble.

EPA estimated the costs, benefits, and potential economic impacts of the final rule and of one major regulatory alternative to it. Only the impacts of the final rule are presented here; results for the regulatory alternative are discussed in the RIA.

Provisions of the final rule, as analyzed in the RIA, are as follows:

- Treatment standards are established for certain F and K wastes, and
- "Soft hammer" provisions apply to remaining First Third wastes.

Two "soft hammer" scenarios for the final rule were examined:

- Scenario 1: "soft hammers" fall on remaining First Third wastes and treatment capacity is assumed not to exist; therefore, these wastes may continue to be land disposed. Landfills and surface impoundments receiving "soft hammer" wastes must meet minimum technological requirements.
- Scenario 2: "soft hammers" fall on remaining First Third wastes and treatment capacity is assumed to exist; therefore, these wastes must meet "approximate treatment standards" (treatment that will reduce the mobility and toxicity of hazardous constituents), and the treatment residuals must be disposed of in units meeting minimum technological requirements (except where the residuals are exempt from regulation).

While neither scenario corresponds exactly to the proposed rule, it was

assumed that the two scenarios would establish upper and lower bounds on the effects of the final rule. It was assumed that the "soft hammer" requirements would not affect wastes managed in waste piles or in land treatment units, since the only requirement for facilities managing these wastes would be notification.

The effects of the final rule were estimated by comparing post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions (i.e., in the absence of the regulation). The baseline is defined to be continued land disposal of wastes in units meeting minimum technological requirements.

4. Methodology

a. *Determination of Affected Wastes and Facilities.* The first step in estimating the impacts of the rule was to determine which wastes and facilities would be affected by the rule. Based on waste characterization and volume data primarily from the 1986 "National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities" (the TSDR Survey), EPA identified affected wastes and facilities. (See Section III. H. for a discussion of this procedure.) The average quantity of waste contributed by generator facilities was based on EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981."

The population of wastes that would be affected by the rule may include some wastes from CERCLA responses or RCRA corrective actions; however, there are insufficient data at present to estimate these quantities. Also, underground injected wastes were excluded from this analysis since these wastes will be dealt with in the RIA for a separate rule.

The population of affected facilities includes:

- Hazardous waste treatment, storage, and disposal facilities with commercial management processes ("commercial TSDFs"), which charge a fee for hazardous waste management;
- TSDFs with only non-commercial processes ("non-commercial TSDFs"), which provide management services for wastes generated on-site or off-site by firms under the same ownership; and
- Large and small quantity generators ("generators"), which send their waste off-site to commercial TSDFs for management.

b. *Cost Methodology.* Once waste types, quantities, and baseline and post-regulatory management methods were known for the population of affected

facilities, EPA developed estimates of baseline and post regulatory costs for the facilities. In estimating the costs, wastes at a facility that were amenable to co-management were grouped to identify economies of scale.

Baseline and post-regulatory costs include both on-site and off-site management costs. On-site management costs are comprised of two parts: operation and maintenance (O&M) costs and capital costs. O&M costs are incurred annually for operation and maintenance of waste treatment or disposal units. Capital costs include costs for construction and depreciable assets; these costs are restated as annual values by using a capital recovery factor based on a real interest rate of five percent. The annualized capital costs are added to yearly O&M costs to derive overall annual baseline or post-regulatory costs for facilities. By taking the difference between the annualized baseline and post-regulatory costs, annualized incremental costs for facilities were estimated.

Off-site management costs are based on commercial hazardous waste management prices. Shipping costs were included for wastes sent off-site.

c. *Economic Impact Methodology—(1) Non-Commercial TSDFs.* To assess economic impacts, EPA converted the before-tax incremental costs for facilities from the cost analysis to after-tax compliance costs. Compliance costs were then compared with facility financial information, organized by Standard Industrial Classification (SIC) code and facility size, to gauge impacts. (See Section C for references.)

Two ratios were used to identify facilities likely to experience adverse economic effects:

- Compliance cost divided by cost of production (the COP ratio), and
 - Cash from operations divided by compliance cost (the CFO ratio).
- These ratios bound possible effects on individual firms by looking at what would happen with complete pass-through of compliance costs to customers and with no pass-through of costs. The COP ratio represents the percent product price increase for facility output that occurs if the entire compliance cost—accompanied by facility profit—is passed through to customers in the form of higher prices. A change exceeding five percent is considered to imply a substantial adverse economic effect on a facility. The CFO ratio represents the number of times that a facility's gross margin covers the regulatory compliance cost if the facility fully absorbs the cost. For this ratio, a value of less than 20 is

considered to represent a significant adverse effect.

Once facilities experiencing adverse economic effects were identified using the two ratios, an analysis was performed to identify which of these facilities would be likely to close. Economic effects on individual facilities were examined assuming that product price increases of five percent were possible. Those facilities for which the CFO ratio was less than two were considered likely to close.

(2) *Commercial TSDFs.* For this group of facilities, the analysis of economic effects was qualitative. This analysis included an examination of the quantity of waste each facility received as a percentage of the wastes restricted by today's rule.

(3) *Generators.* EPA's analysis of the economic impacts of this rule on generators disposing of affected wastes off-site assumed that commercial TSDFs could entirely pass on to generators the costs of compliance (in the form of higher prices for waste management services). Because of data limitations, EPA used a different approach to estimate economic impacts for generators than it used for non-commercial TSDFs. This approach based compliance costs on average waste quantities shipped from generators to commercial facilities and then compared those compliance costs with average financial data for the generators in order to assess impacts. The same impact measures used to assess impacts on non-commercial TSDFs were used to gauge impacts on generators.

d. *Benefits Methodology.* The benefits of today's rule were evaluated by considering the reduction in human health risk that would result from using alternative treatment for First Third wastes rather than employing baseline land disposal practices. Human health risk is defined herein as the probability of injury, disease, or death over a given time (70 years) due to responses to doses of disease-causing agents. The human health risk posed by a waste management practice is a function of the toxicity of the chemical constituents in the waste stream and the extent of human exposure to the constituents. The likelihood of exposure is dictated by hydrogeologic and climatic settings at land disposal units and the fate and transport of chemical constituents in environmental media.

EPA estimated human health risk in four steps. The first step was to estimate the concentrations of each of the hazardous constituents of the waste stream in each of the three media (air,

surface water, and ground water) into which they might be released by a certain waste management technology. These estimates depend on the steady-state (i.e., continuous) release rates calculated for each technology, and on environmental fate and transport characteristics for constituents.

The next step was to estimate the total human intake, or dose, of each of the chemicals through inhalation of air or ingestion of ground water or surface water. A 65 kilogram person was assumed to be continuously exposed to contaminated media over a 70-year lifetime.

The Agency next calculated the risk to an individual from the dose derived in the previous step. For carcinogenic constituents within a wastestream, a dose-response curve was used to estimate the risk. For non-carcinogenic constituents, the exposure concentration was compared with the health-effects threshold to determine whether exposure above the threshold had occurred.

Finally, EPA estimated the population risk for carcinogenic and non-carcinogenic constituents within a wastestream. Population risk for carcinogenic constituents was determined by multiplying the average individual risk by the number of people in a given environment. Population risk for non-carcinogenic constituents was based on the number of persons exposed to concentrations exceeding the health-effects thresholds.

Benefits other than reduction in human health risk—such as resource damage avoided and corrective action costs avoided—were not quantified. Since these other benefits are likely to be significant, the benefits presented here are probably understated.

5. Results

a. *Population of Affected Facilities.* The number of facilities affected under Scenarios 1 and 2 for the final rule is very similar, as shown in Table 1. Most of the affected facilities are generators.

TABLE 1.—NUMBER OF AFFECTED FACILITIES

	Final rule	
	Scenario 1	Scenario 2
Commercial TSDFs	35	35
Non-Commercial TSDFs	102	102
Generators	1,593	1,568
Total	1,730	1,705

b. *Costs.* As shown in Table 2, the final rule is a major rule, with costs of

\$907–962 million per year.

TABLE 2.—COSTS OF THE FINAL RULE (ANNUALIZED INCREMENTAL COST IN MILLIONS OF 1987 DOLLARS)

	Final rule	
	Scenario 1	Scenario 2
Treatment of Certain F and K Wastes	907	907
"Soft hammer" on Remaining First Third Wastes	0	55
Total	907	962

Most of the costs of the final rule are due to treatment of F and K wastes. The F and K wastes going to treatment are high-volume wastes; large portions of the wastes are managed in landfills, land treatment units, or treatment surface impoundments in the baseline and go to incineration and/or stabilization under the final rule. The ash from incineration often requires stabilization due to the ash's metal content; the scrubber effluent from incineration often requires wastewater treatment to remove metals.

The First Third wastes subject to the "soft hammer" provisions, on the other hand, are generated in relatively small quantities and therefore do not affect costs significantly. Their management under the final rule depends on which scenario is considered. Under Scenario 1, the wastes continue to be land disposed in units meeting minimum technological requirements. Under Scenario 2, the wastes are mostly incinerated; however, since the wastes are largely organic with little metal content, the ash from incineration generally does not require stabilization.

Under the final rule, the two "soft hammer" scenarios result in a significant difference in cost. Scenario 1—continued land disposal of "soft hammer" wastes—results in zero incremental cost over the baseline for "soft hammer" wastes. Scenario 2—treatment of "soft hammer" wastes under "approximate treatment standards"—results in an incremental cost of \$55 million per year. The costs associated with the "soft hammer" would be incurred for less than two years, i.e., until hard hammers fell, treatment standards were established, or extensions to the effective date were granted.

[Note: The costs presented in this section were based on incineration as BDAT for K048–52. Costs based on solvent extraction as BDAT for these wastes could be significantly lower.]

c. *Economic Impacts.* Most of the significantly affected facilities under the final rule are generators, as shown in Table 3. More generators are affected under Scenario 2 than Scenario 1 due to the higher management costs for "soft hammer" wastes going to treatment.

TABLE 3.—NUMBER OF FACILITIES SIGNIFICANTLY AFFECTED BY THE FINAL RULE

	Final rule	
	Scenario 1	Scenario 2
Commercial TSDFs	(¹)	(¹)
Non-Commercial TSDFs	45	46
Generators	960	1,119
Total	1,005	1,165

¹ TSDFs with commercial processes were assumed to pass all compliance costs through to generators; therefore, the number of significantly affected facilities was not calculated.

SIC sector 29 (Petroleum Refining and Related Products) is the most significantly affected sector; SIC 29 generators and non-commercial TSDFs account for nearly 40 percent of overall compliance costs. The number of facilities likely to close, looking at all SIC sectors, would be 197 and 199 under Scenarios 1 and 2, respectively.

[Note: The economic impacts presented in this section were based on incineration as BDAT for K048–52. Economic impacts based on solvent extraction as BDAT for these wastes could be significantly smaller.]

d. *Benefits.* The reductions in carcinogenic and non-carcinogenic risk due to the final rule are shown in Tables 4 and 5.

TABLE 4.—REDUCTION IN CARCINOGENIC RISK (NUMBER OF CASES AVOIDED OVER A 70-YEAR EXPOSURE PERIOD)

	Final rule	
	Scenario 1	Scenario 2
Treatment of F and K Wastes	295	295
"Soft hammer" on Remaining First Third Wastes	0	65
Total	295	360

TABLE 5.—REDUCTION IN NON-CARCINOGENIC RISK (REDUCTION IN NUMBER OF PERSONS EXPOSED TO A NON-CARCINOGEN AT A DOSE ABOVE ITS RfD)

	Final rule	
	Scenario 1	Scenario 2
Treatment of F and K Wastes	414	414

TABLE 5.—REDUCTION IN NON-CARCINOGENIC RISK (REDUCTION IN NUMBER OF PERSONS EXPOSED TO A NON-CARCINOGEN AT A DOSE ABOVE ITS RfD)—Continued

	Final rule	
	Scenario 1	Scenario 2
"Soft hammer" on Remaining First Third Wastes	0	8
Total	414	422

The reduction in number of cancer cases due to the final rule is 295 and 360 for Scenarios 1 and 2, respectively. The largest reductions under both scenarios (150 cases) are treatment of K061 wastes (Emission Control Dust/Sludge from the Primary Production of Steel in Electric Furnaces). Restrictions on K048-K052 wastes (from the petroleum refining industry) result in a decrease of another 115 cancer cases.

The reduction in number of persons exposed to a non-carcinogen at a concentration above its RfD ranges from 414 under Scenario 1 to 422 under Scenario 2. In this case, much of the benefit under both scenarios is due to K048, K049, K061, and mixtures of these wastes, acting through ground water exposure.

Under both alternatives, the average carcinogenic risk to an individual in the population is reduced across all media by imposing land disposal restrictions. Most of this reduction in average individual risk is attributable to reduction in exposure to arsenic via ground water. [Note.—The benefits presented in this section were based on incineration as BDAT for K048-52. Benefits based on solvent extraction as BDAT for these wastes may be different.]

e. *Cost Effectiveness.* The cost effectiveness of the final rule is illustrated in Table 6. Compliance costs for the regulated community and human health risk reduction are the basis for the comparison; other potentially significant costs (e.g., Agency implementation costs) and benefits (e.g., natural resource damage avoided) were not estimated.

TABLE 6.—COST-EFFECTIVENESS OF FINAL RULE

	Final rule	
	Scenario 1	Scenario 2
Costs (Millions of 1987 Dollars per Year)	907	962

TABLE 6.—COST-EFFECTIVENESS OF FINAL RULE—Continued

	Final rule	
	Scenario 1	Scenario 2
Benefits (Reduction in Cancer Cases per Year)...	4.2	5.1
Benefits (Reduction in Exposures to Non-Carcinogens at Concentrations above Threshold)	414	422
Cost Effectiveness (Millions of Dollars per Cancer Case Avoided)	215	190
Cost Effectiveness (Millions of Dollars per Non-Carcinogen Exposure Avoided)	2.2	2.3

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a notice of rulemaking, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). An RFA is unnecessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities. EPA believes that the final rule could potentially have a significant effect on a substantial number of small entities, and particularly generators who are small businesses. However, the Agency does not have sufficient data to distinguish small business generators from large business generators or to identify alternatives for small businesses. The Agency did receive extensive comments and some data on generators of F006, a substantial number of whom are small entities. Therefore, EPA has conducted a Regulatory Flexibility Analysis for facilities affected by the standards for F006 wastes.

When EPA proposed this rule, it concluded that there would not be a substantial impact on a significant number of small entities. Since the proposal, EPA has conducted additional analysis of small business impacts. That analysis indicated that six of the nine non-commercial TSDFs that are small businesses would be significantly impacted. EPA does not consider six significantly affected facilities a substantial number of affected facilities.

EPA's analysis of small business impacts did not address commercial TSDFs or generators. Without an evaluation of impacts on generators, which represent over 90 percent of all facilities that manage First Third

wastes, no definitive conclusions can be drawn on the potential impacts to small businesses. It is reasonable to expect that, since 60-71 percent of generators overall are significantly affected, there may be substantial impact on small business generators. However, EPA has no data to support this premise due to the lack of information on which generators are small businesses.

In order to determine whether alternatives are available to minimize impacts on small businesses, it is necessary to identify those wastes generated by small business generators that are most likely affected by the final rule. Based on concerns expressed in the comments, it appears that the treatment standards for F006 wastes from electroplating operations could impact small business generators significantly. Therefore, the Agency has examined three alternatives to minimize the estimated impact on small businesses generating F006 wastes. The Agency recognizes that small businesses in other industries may also be affected significantly.

The first alternative considered was not to set treatment standards for F006, and to allow the "soft hammer" provisions to apply instead. Under this alternative, generators could continue to dispose untreated F006 wastes in landfills and impoundments until May 1990 provided appropriate treatment capacity was not practically available. However, if appropriate treatment was practically available, the generator would be obliged to obtain that treatment before land disposing the waste (assuming these wastes are disposed in landfills or impoundments). Because the treatment standards for F006 wastes were based on a widely available form of stabilization, it appears unlikely that small business generators could successfully demonstrate that appropriate treatment is not practical or is not available. (Note that part of the commenters concerns on F006 arose because a major waste treatment firm, whose stabilization data formed the basis for the proposed standard, later determined that the levels achieved in those tests could not be achieved routinely. However, this was determined to be true for only two of the constituents—zinc and copper; for other reasons, the Agency has deleted zinc and copper from the F006 standards. Therefore, stabilization as normally practiced by waste treatment and disposal firms should be capable of achieving the F006 standards. The firm which developed the original test data agrees with this conclusion.) Since this alternative only provides relief for small

business generators if treatment is not practically available, and it appears that appropriate treatment will be widely available for F006 wastes, this alternative will not be effective in providing relief to small business generators.

The second alternative considered was to set treatment standards, but to grant a two-year extension of the effective date based on lack of treatment capacity. While this alternative could provide relief to small entities for the two-year extension period, the Agency cannot legally grant this extension for reasons other than limited capacity. As noted above, stabilization capacity is widely available. The Agency's recently completed capacity analysis indicates that the amount of available stabilization capacity exceeds the amount needed for First Third wastes. Thus, the Agency cannot make the finding of insufficient capacity necessary to support an extension of the effective date.

The third alternative considered was to alter the treatment standards for F006 wastes. As noted, the Agency has deleted copper and zinc from the standards; this change should ensure that well-designed and well-operated stabilization will achieve the treatment standards. Any further change in the treatment standards would require a change in the BDAT upon which the standard is based. Alternative BDAT technologies that fulfill the mandate of the statute are likely to be more costly to the small business generators, rather than less. Less costly technologies, such as dewatering and sludge drying, do not fulfill the requirement that treatment achieve significant reductions in toxicity and mobility of hazardous constituents. Therefore, this alternative does not minimize impacts on small entities.

Based on this examination of the alternatives, the Agency has concluded that there are not practical and legally available alternatives to minimize possible impacts on small business generators of F006 wastes.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq* and have been assigned OMB control Number 2050-0085. Reporting and recordkeeping burden on the public for this collection is estimated at 10,745 hours for the 19,679 respondents, with an average of 0.55 hours per response. These burden estimates include all aspects of the collection effort and may

include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, etc.

If an interested party wishes to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or would like a copy of the information collection request (please reference ICR #1442), contact Rick Westlund, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382-2745; and Marcus Peacock, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by this rule was EPA's 1986 "National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities" (the TSDR Survey). The average quantity of waste contributed by generator facilities was obtained from EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981" (April 1984).

Waste stream characterization data and engineering costs of waste management were based on the following EPA documents:

- "Characterization of Waste Streams Listed in 40 CFR Section 261 Waste Profiles," Vols. I and II (August 1985);
- "Characterization of Constituents from Selected Waste Streams Listed in 40 CFR Section 261," Vols I and II (August 1985);
- RCRA background and listing documents for 40 CFR Section 261;
- RCRA Section 3007 industry studies;
- "RCRA Risk-Cost Analysis Model, Appendix A: Waste Stream Data Base" (March 1984); and
- Source assessment documents for various industries.
- "1986-1987 Survey of Selected Firms in the Commercial Hazardous Waste Management Industry: Final Report" (March 1988).

Financial information for the economic impact analysis was obtained from the 1982 Census of Manufacturers and 1984 Annual Survey of Manufacturers. Producer price indices were used to restate 1984 dollars in 1987 terms.

VIII. Implementation of the Part 268 Land Disposal Restrictions Program

EPA has stated in earlier rules (see 51 FR 40572, November 7, 1986; 52 FR 21010, June 4, 1987; 52 FR 25760, July 8, 1987) that "restricted" wastes are subject to certain Part 268 requirements (e.g., the § 268.7 recordkeeping requirements and the § 268.3 dilution prohibitions) even if such wastes are subject to an exemption, extension, or variance making them eligible for land disposal. The Agency has become aware of some confusion in the regulated community regarding this point. The confusion seems to have been created through the interchanging use, by both the regulated community and, in some instances, by EPA, of the terms "restricted" and "prohibited". To eliminate this confusion, EPA clarified the distinction between "restricted" and "prohibited" wastes in the May 17 proposal (53 FR 17620). For the benefit of the regulated community, the Agency is repeating the clarification in today's rule.

"Restricted" wastes are those categories of hazardous wastes that are prohibited from land disposal either by regulation or statute (regardless of whether subcategories of such wastes are subject to a § 268.5 extension, § 268.6, "no migration" exemption, or national capacity variance, any of which makes them currently eligible for land disposal). In other words, a hazardous waste is "restricted" no later than the date of the deadline established in, or pursuant to, RCRA section 3004. Therefore, the F001-F005 solvent wastes and the F020-F023 and F026-F028 dioxin-containing wastes were "restricted" as of November 8, 1986, despite the fact that several subcategories of these wastes obtained 2-year national capacity variances allowing them to be land disposed until November 8, 1988. Similarly, California list wastes were "restricted" as of July 8, 1987, despite the fact that several subcategories of such wastes obtained 2-year national capacity variances allowing continued land disposal until July 8, 1989. Wastes contained in the schedule of thirds (51 FR 19300, May 28, 1986) are considered "restricted" no later than the dates specified in the schedule promulgated at 40 CFR 268.10, 268.11, and 268.12.

Generators must determine whether their wastes are "restricted" at the point of initial generation, i.e., when the waste is first considered a hazardous waste subject to RCRA regulation. To determine whether a hazardous waste is "restricted," generators need only

determine whether the waste belongs to a category of wastes that has been prohibited from land disposal by regulation or by the automatic "hammer" provisions of RCRA.

"Prohibited" wastes are a subset of "restricted" wastes, i.e., they are those "restricted" wastes that are currently ineligible for land disposal. Therefore, a hazardous waste that is not "restricted" cannot be "prohibited" under RCRA section 3004. However, once a waste is considered "restricted", at least some of the Part 268 requirements apply.

The first Part 268 requirement applicable to "restricted" wastes is that generators must determine whether their waste currently is eligible for land disposal pursuant to the requirements of § 268.7. If the waste currently is not eligible for land disposal (i.e., the prohibition effective date has passed, the waste does not meet all applicable treatment standards or prohibition levels and no § 268.5 extensions, § 268.6 "no migration" exemption, or national capacity variances apply), then the waste currently is "prohibited" from land disposal as well as "restricted". If, however, the waste currently is eligible for land disposal (i.e., the prohibition effective date has passed but the waste meets the applicable treatment standards or prohibition levels or is subject to a § 268.5 extension, § 268.6 "no migration" exemption, or national capacity variance) then the waste is considered "restricted" but not currently "prohibited". All wastes that are "restricted" must comply with the § 268.3 dilution prohibition (assuming the wastes are land disposed or otherwise managed after the prohibition effective date), the § 268.7 waste analysis and recordkeeping requirements, and all other applicable Part 268 requirements.

As a result of the regulations promulgated today under Part 268, several options will be available to the generator or owner or operator of a treatment, storage, and disposal facility for the management of restricted hazardous wastes. This section helps the regulated community determine the appropriate waste management procedures. It provides references to the applicable 40 CFR Parts 264 and 265 requirements as well as Part 268 requirements for implementation of the various waste management options.

All the sequences in the generator's decision-making process must commence with a determination as to whether the hazardous waste is restricted in Part 268 Subpart C or RCRA section 3004(d). If the hazardous waste is not restricted, it cannot be subject to

the land disposal restrictions of Part 268. It must nevertheless be managed in accordance with Parts 264 and 265.

The generator of a restricted waste must determine the appropriate treatment standards (if any) under Part 268 Subpart D (or prohibitions under RCRA section 3004(d)). The applicable treatment standards must be determined at the point of initial generation prior to any treatment. (Of course, if in the course of managing the waste a new treatability group is created, for example a scrubber water from the incineration of a nonwastewater, the treatment standard applicable to this new treatability group will apply.) At this time, he must determine the effective date of the applicable treatment standard under Part 268 Subpart C. EPA has the authority to delay the effective dates of the Part 268 treatment standards based on the unavailability of adequate national treatment capacity. Determinations as to the adequacy of treatment capacity are based on the quantity of waste generated and the availability of alternative treatment, recovery or disposal technologies. For these wastes where EPA has determined that alternative capacity is adequate, or has for whatever reason not established an alternate effective date, the treatment standards take effect immediately upon promulgation. The generator must use analysis of his waste (or waste extract, when applicable) or knowledge of his waste to make determinations as to whether his waste may go directly to land disposal or first must be treated (data supporting such knowledge and any waste analysis data must be kept on-site).

If the concentrations of the hazardous constituents in the waste (or waste extract, when applicable) are in compliance with the applicable treatment standards, the waste may go directly to land disposal. The generator must submit a notice and certification statement to the land disposal facility as required under § 268.7. The land disposal facility must verify the records of the generator in accordance with the facility's waste analysis plan. A generator that operates an on-site land disposal facility must put the information contained in the notice (except for the manifest number) in the operating record of the land disposal facility.

If the concentrations of the hazardous constituents in the waste (or waste extract, when applicable) exceeds the treatment standards, placement of the waste in land disposal units as of the effective date specified in Part 268 Subpart C is prohibited (unless the

waste is subject to a case-by-case extension under § 268.5, or a "no-migration" exemption under § 268.6).

An off-site treatment or storage facility must obtain a notice from the generator as required in § 268.7. This notice must be placed in the operating record. Generators that are also treatment facilities must keep the information contained in the notice (except for the manifest number) in the facility's operating record.

When shipping the treatment residual to an interim status or RCRA permitted land disposal facility, the treatment or storage facility must certify in accordance with § 268.7 that the treatment residue meets the applicable treatment standards and must also send a notice (§ 268.7) to the land disposal facility.

If the generator's waste is a restricted waste listed in § 268.10 (i.e., a First Third waste) where treatment standards have not been set, and such waste is land disposed off-site by methods other than landfills or surface impoundments, the generator must provide a notice in accordance with § 268.7. The off-site disposal facility is required to keep the generator's notice in its operating record, and is responsible for ensuring that the waste is not disposed in a landfill or surface impoundment. If the generator disposes on-site, the information contained in the notice (except for the manifest number) must be kept in the facility's operating record, and the generator must ensure that such waste is not disposed in a landfill or surface impoundment.

If the generator's waste is a restricted waste listed in § 268.10, where treatment standards have not been set, and are disposed in a landfill or surface impoundment, such waste may only be disposed in landfill or surface impoundment units that meet the minimum technological requirements of RCRA section 3004(o) (double liner, leachate collection system, and groundwater monitoring), or satisfy the section 3004(o)(2) equivalence standard. Prior to such disposal, the generator must certify to the Regional Administrator in accordance with § 268.8.

To make this certification, the generator must investigate practically available technologies appropriate for treating his waste (see sections III. A. 8. and III. C. of this preamble for guidance on appropriate technologies and on determining whether such technologies are practical). The generator must demonstrate that he has made this investigation, certifying that either no practically available technologies exist

for treating his waste, or that the best technology(ies) practically available has been contracted to treat the waste. Prior to treatment (if any) and disposal, the generator must send the demonstration and certification to the Regional Administrator, to the receiving facility, and also keep records on-site. Provided the conditions of the certification remain unchanged, demonstrations and certifications need not be sent again to the Regional Administrator. However, if changes do occur, the generator must submit a new demonstration and certification to the Regional Administrator. Should EPA notify the generator that his certification is invalidated, the generator is responsible for immediately notifying the facility(ies) receiving his waste of such action and must keep records of such communication on-site.

Where the generator demonstrates and certifies that no practically available treatment exists, the waste may be disposed in a landfill or surface impoundment meeting the minimum technological requirements. For off-site disposal, the demonstration and certification required in § 268.7, as well as the notice required in § 268.7 must be provided with the initial waste shipment. The § 268.8 demonstration need not be provided again as long as the conditions of the demonstration have not changed. Thereafter, only the notice required in § 268.7 and the certification required in § 268.8 must be provided with each waste shipment. If such waste is disposed on-site, the demonstration and certification required is § 268.8, as well as the notice (except for the manifest number) required in § 268.7 must be kept in the operating record.

If the generator's waste is a restricted waste listed in § 268.10 where no treatment standards has been set, and the waste goes off-site for treatment, the generator must send the demonstration (only for the initial shipment), and certification required in § 268.8 and the notice required in § 268.7. The treatment facility must keep a copy of the certification, demonstration (if applicable), and notice in its operating record. If treated on-site, the information contained in the notice (except for the manifest number) must be kept in the facility's operating record. After treatment, the residuals may be land disposed in a landfill or surface impoundment unit meeting the minimum technological requirements of section 3004(o). The owner or operator must certify that the treatment indicated in the generator's demonstration has been done, prior to disposal. For off-site

disposal, with the initial waste shipment, the generator's demonstration, certification and notice must be sent to the disposal facility along with the owner operator's certification. Thereafter, only the generator's and owner or operator's certification and notice must be sent. For on-site disposal, the information contained in the notice (except the manifest number) as well as all certifications and demonstrations must be kept in the operating record. [Note: As discussed in section III. C. 3., certain wastewater residuals from treatment of First Third wastes for which EPA has not promulgated treatment standards, as well as leachate and contaminated ground water derived from the management of First Third wastes for which EPA has not promulgated treatment standards are not prohibited from land disposal until May 8, 1990 (by virtue of amending § 268.12, reprioritizing the schedule) or until treatment standards are established, whichever is sooner.]

IX. References

- (1) U.S. EPA, "Regulatory Impact Analysis of Restrictions of the Land Disposal on First Third Wastes", August, 1988.
- (2) U.S. EPA, "Regulatory Impact Analysis of Restrictions on Land Disposal of First Third Wastes, Appendices", August, 1988.
- (3) U.S. EPA, "Alternative Waste Management Technology Cost Estimates for the First Third Land Disposal Restrictions", August, 1988.
- (4) U.S. EPA, "Background Document for First Third Wastes to Support 40 CFR 268 Land Disposal Restrictions Final Rule, First Third Waste Volumes, Characteristics, and Required and Available Treatment Capacity", August 8, 1988.
- (5) U.S. EPA, "Comment Response Background Document for the First Third Proposed Land Disposal Restrictions Rule", August 8, 1988.
- (6) U.S. EPA, "Response to Capacity Related Comments Submitted on the First Third Proposed Land Disposal Restrictions Rule", August 8, 1988.
- (7a) U.S. EPA, "Response to BDAT Related Comments Submitted on the First Third Proposed Land Disposal Restrictions Rule", Vol. I, August 8, 1988.
- (7b) U.S. EPA, "Response to BDAT Related Comments Submitted on the First Third Proposed Land Disposal Restrictions Rule", Vol. II, August 8, 1988.
- (7c) U.S. EPA, "Response to BDAT Related Comments Submitted on the First Third Proposed Land Disposal Restrictions Rule", Vol. III, August 8, 1988.
- (8) U.S. EPA, "Guidance Document for Applicable and Demonstrated Technologies for First Third Waste Codes", EPA/530-SW-88-031P, August 8, 1988.
- (9) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for F001-F005, Addendum", EPA/530-SW-88-031R, August 8, 1988.

- (10) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for F006", EPA/530-SW-88-031L, August 8, 1988.
- (11) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K001", EPA/530-SW-88-031O, August 8, 1988.
- (12) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K015", EPA/530-SW-88-031A, August 8, 1988.
- (13) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K016, K018, K019, K020, K030", EPA/530-SW-88-031B, August 8, 1988.
- (14) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K022", EPA/530-SW-88-031Q, August 8, 1988.
- (15) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K024", EPA/530-SW-88-031H, August 8, 1988.
- (16) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K037", EPA/530-SW-88-031I, August 8, 1988.
- (17) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K046", EPA/530-SW-88-031J, August 8, 1988.
- (18) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K048, K049, K050, K051, K052", EPA/530 SW 88 031C, August 8, 1988.
- (19) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K061", EPA/530-SW-88-031D, August 8, 1988.
- (20) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K062", EPA/530 SW 88 031E, August 8, 1988.
- (21) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K071", EPA/530-SW-88-031F, August 8, 1988.
- (22) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K086", EPA/530 SW-88 031N, August 8, 1988.
- (23) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K087", EPA/530-SW-88-031M, August 8, 1988.
- (24) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K101, K102", EPA/530-SW-88-031K, August 8, 1988.
- (25) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K103, K104", EPA/530-SW-88-031G, August 8, 1988.

X. List of Subjects

40 CFR Parts 264 and 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds

40 CFR Part 266

Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply

Dated: August 8, 1988.

Lee M. Thomas

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I of the CFR is amended as follows:

I. In Part 264:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart B—General Facility Standards

2. Section 264.13 is amended by revising paragraph (b)(7)(iii) to read as follows:

§ 264.13 General waste analysis.

(b) * * *

(iii) The annual removal of residues which are not delisted under § 260.22 of this chapter or which exhibit a characteristic of hazardous waste and either:

(A) Do not meet applicable treatment standards of Part 268, Subpart D; or
(B) Where no treatment standards have been established;

(1) Such residues are prohibited from land disposal under § 268.32 or RCRA section 3004(d); or

(2) Such residues are prohibited from land disposal under § 268.33(f).

Subpart E—Manifest System, Recordkeeping, and Reporting

3. In § 264.73 paragraphs (b) (10), (11), (12), (13) and (14) are revised and paragraphs (b) (15) and (16) are added to read as follows:

§ 264.73 Operating record.

(b) * * *

(10) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5, a petition pursuant to § 268.6, or a certification under § 268.8, and the applicable notice required by a generator under § 268.7(a);

(11) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(12) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(13) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 and § 268.8, whichever is applicable; and

(14) For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under § 268.7, except for the manifest number, and the certification and demonstration if applicable, required under § 268.8, whichever is applicable.

(15) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8; and

(16) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8.

II. In Part 265:

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart B—General Facility Standards

2. Section 265.13 is amended by revising paragraph (b)(7)(iii) to read as follows:

§ 265.13 General waste analysis.

(b) * * *

(iii) The annual removal of residues which are not delisted under § 260.22 of this chapter or which exhibit a characteristic of hazardous waste and either:

(A) Do not meet applicable treatment standards of Part 268, Subpart D; or

(B) Where no treatment standards have been established;

(1) Such residues are prohibited from land disposal under § 268.32 or RCRA section 3004(d); or

(2) Such residues are prohibited from land disposal under § 268.33(f).

Subpart E—Manifest System, Recordkeeping, and Reporting

3. In § 265.73 paragraphs (b) (8), (9), (10), (11) and (12) are revised and paragraphs (b) (13) and (14) are added to read as follows:

§ 265.73 Operating record.

(b) * * *

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5, monitoring data required pursuant to a petition under § 268.6, or a certification under § 268.8, and the applicable notice required by a generator under § 268.7(a);

(9) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(10) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(11) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 or § 268.8;

(12) For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 or § 268.8.

(13) For an off-site storage facility, a copy of the notice, and the certification

and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8; and

(14) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 or § 268.8.

III. In Part 266:

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

2. Section 266.20 paragraph (b) is revised to read as follows:

§ 266.20 Applicability.

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in Subpart D of Part 268 (or applicable prohibition levels in § 268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste constituent) that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation.

IV. In Part 268:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

2. In § 268.1 paragraph (c)(3) is removed, paragraph (c)(4) is redesignated as paragraph (c)(3); paragraph (c)(5) is redesignated as paragraph (c)(4) and revised, and

paragraphs (c)(5) and (d) are added to read as follows:

§ 268.1 Purpose, scope and applicability.

(c) * * *
(4) Where a farmer is disposing of waste pesticides in accordance with § 262.70;

(5) Prior to May 8, 1990, in a landfill or surface impoundment unit where all applicable persons are in compliance with the requirements of § 268.8, with respect to wastes that are not subject to the treatment standards set forth in Subpart D and not subject to the prohibitions in § 268.32 or RCRA § 3004(d).

(d) The requirements of this part shall not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

3. Section 268.4 is amended by revising paragraph (a)(2) to read as follows:

§ 268.4 Treatment surface impoundment exemption.

(a) * * *

(2) The following conditions are met:

(i) *Sampling and testing.* For wastes with treatment standards in Subpart D of this part and/or prohibition levels in Subpart C of this part or RCRA section 3004(d), the residues from treatment are analyzed, as specified in § 268.7 or § 268.32, to determine if they meet the applicable treatment standards or where no treatment standards have been established for the waste, the applicable prohibition levels. The sampling method, specified in the waste analysis plan under § 264.13 or § 265.13, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples.

(ii) *Removal.* The following treatment residues (including any liquid waste) must be removed at least annually: residues which do not meet the treatment standards promulgated under Subpart D of this part; residues which do not meet the prohibition levels established under Subpart C of this part or imposed by statute (where no treatment standards have been established); residues which are from the treatment of wastes prohibited from land disposal under Subpart C of this part (where no treatment standards have been established and no prohibition levels apply); or residues from managing listed wastes which are not delisted under § 260.22 of this chapter. However, residues which are

the subject of a valid certification under § 268.8 made no later than a year after placement of the wastes in an impoundment are not required to be removed annually. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement.

(iii) *Subsequent management.* Treatment residues may not be placed in any other surface impoundment for subsequent management unless the residues are the subject of a valid certification under § 268.8 which allows disposal in surface impoundments meeting the requirements of section 268.8(a).

(iv) *Recordkeeping.* The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residues which do not meet the treatment standards, or prohibition levels (where no treatment standards have been established), or which are from the treatment of wastes prohibited from land disposal under Subpart C (where no treatment standards have been established and no prohibition levels apply), must be specified in the facility's waste analysis plan as required under § 264.13 or § 265.13 of this chapter.

4. Section 268.5 is amended by revising paragraph (h)(2) to read as follows:

§ 268.5 Procedures for case-by-case extensions to an effective date.

(h) * * *

(2) Such hazardous waste may be disposed in a landfill or surface impoundment unit only if such unit is in compliance with the following requirements:

5. Section 268.6 is amended by adding new paragraphs (a)(4) and (a)(5), by redesignating paragraph (c) as paragraph (d), (d) as (g), (e) as (h), (f) as (i), (g) as (j), (h) as (k), (i) as (l), (j) as (m), (k) as (n), and by adding new paragraphs (c), (e), and (f) to read as follows:

§ 268.6 Petitions to allow land disposal of a waste prohibited under Subpart C of Part 268.

(a) * * *

(4) A monitoring plan that detects migration at the earliest practicable time;

(5) Sufficient information to assure the Administrator that the owner or operator of a land disposal unit receiving restricted waste(s) will comply with other applicable Federal, State, and local laws.

(c) Each petition referred to in paragraph (a) of this section must include the following:

(1) A monitoring plan that describes the monitoring program installed at and/or around the unit to verify continued compliance with the conditions of the variance. This monitoring plan must provide information on the monitoring of the unit and/or the environment around the unit. The following specific information must be included in the plan:

(i) The media monitored in the cases where monitoring of the environment around the unit is required;

(ii) The type of monitoring conducted at the unit, in the cases where monitoring of the unit is required;

(iii) The location of the monitoring stations;

(iv) The monitoring interval (frequency of monitoring at each station);

(v) The specific hazardous constituents to be monitored;

(vi) The implementation schedule for the monitoring program;

(vii) The equipment used at the monitoring stations;

(viii) The sampling and analytical techniques employed; and

(ix) The data recording/reporting procedures.

(2) Where applicable, the monitoring program described in paragraph (c)(1) of this section must be in place for a period of time specified by the Administrator, as part of his approval of the petition, prior to receipt of prohibited waste at the unit.

(3) The monitoring data collected according to the monitoring plan specified under paragraph (c)(1) of this section must be sent to the Administrator according to a format and schedule specified and approved in the monitoring plan, and

(4) A copy of the monitoring data collected under the monitoring plan specified under paragraph (c)(1) of this section must be kept on-site at the facility in the operating record.

(5) The monitoring program specified under paragraph (c)(1) of this section must meet the following criteria:

(i) All sampling, testing, and analytical data must be approved by the Administrator and must provide data that is accurate and reproducible.

(ii) All estimation and monitoring techniques must be approved by the Administrator.

(iii) A quality assurance and quality control plan addressing all aspects of the monitoring program must be provided to and approved by the Administrator.

(e) After a petition has been approved, the owner or operator must report any changes in conditions at the unit and/or the environment around the unit that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the units as follows:

(1) If the owner or operator plans to make changes to the unit design, construction, or operation, such a change must be proposed, in writing, and the owner or operator must submit a demonstration to the Administrator at least 30 days prior to making the change. The Administrator will determine whether the proposed change invalidates the terms of the petition and will determine the appropriate response. Any change must be approved by the Administrator prior to being made.

(2) If the owner or operator discovers that a condition at the site which was modeled or predicted in the petition does not occur as predicted, this change must be reported, in writing, to the Administrator within 10 days of discovering the change. The Administrator will determine whether the reported change from the terms of the petition requires further action, which may include termination of waste acceptance and revocation of the petition, petition modifications, or other responses.

(f) If the owner or operator determines that there is migration of hazardous constituent(s) from the unit, the owner or operator must:

(1) Immediately suspend receipt of restricted waste at the unit, and

(2) Notify the Administrator, in writing, within 10 days of the determination that a release has occurred.

(3) Following receipt of the notification the Administrator will determine, within 60 days of receiving notification, whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. The Administrator shall also determine whether further examination of any migration is warranted under applicable provisions of Part 264 or Part 265.

6. Section 268.7 is amended by revising paragraph (a) introductory text, by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, (a)(3), by redesignating paragraph (a)(4) as (a)(5) and revising it, by adding new paragraphs (a)(4) and (a)(6), by revising paragraph (b) introductory text, by redesignating paragraph (b)(1) as (b)(4) and (b)(2) as (b)(5), by adding new paragraphs (b)(1), (b)(2), (b)(3), (b)(6), (b)(7), and (b)(8), and by revising paragraph (c) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32 or section 268.43 of the part, the generator must test his waste, or test an extract developed using the test method described in Appendix I of this part, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part.

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in Subpart D of this part or exceeds the applicable prohibition levels set forth in § 268.32 or RCRA § 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibition levels set forth in § 268.32 or RCRA § 3004(d). The notice must include the following information:

(2) If a generator determines that he is managing a restricted waste under this part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in Subpart D of this part and the applicable prohibition levels set forth in § 268.32 or RCRA § 3004(d).

(3) If a generator's waste is subject to a case by-case extension under § 268.5, an exemption under § 268.6, or a nationwide variance under Subpart C, with each shipment of waste, he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The notice must include the following information:

(i) EPA Hazardous Waste Number;
(ii) The corresponding treatment standards and all applicable prohibitions set forth in § 268.32 or RCRA section 3004(d);

(iii) The manifest number associated with the shipment of waste;

(iv) Waste analysis data, where available; and

(v) The date the waste is subject to the prohibitions.

(4) If a generator determines that he is managing a waste that is subject to the prohibitions under § 268.33(f) of this part and is not subject to the prohibitions set forth in § 268.32 of this part, with each shipment of waste the generator must notify the treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in § 268.33(f). The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The applicable prohibitions set forth in section 268.33(f);

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data, where available.

(5) If a generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines whether the waste is restricted based on testing this waste or an extract developed using the test method described in Appendix I of this part, all waste analysis data must be retained on-site in the generator's files.

(6) Generators must retain on-site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to this section for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The five year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans as required by § 264.13 or § 265.13. Such testing must be performed as provided in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

(1) For wastes with treatment standards expressed as concentrations in the waste extract (§ 268.41), the owner or operator of the treatment facility must test the treatment residues, or an extract of such residues developed using the test method described in Appendix I of this part, to assure that the treatment residues or extract meet the applicable treatment standards.

(2) For wastes that are prohibited under § 268.32 of this part or RCRA

section 3004(d) but not subject to any treatment standards under Subpart D of this part, the owner or operator of the treatment facility must test the treatment residues according to the generator testing requirements specified in § 268.32 to assure that the treatment residues comply with the applicable prohibitions.

(3) For wastes with treatment standards expressed as concentrations in the waste (§ 268.43), the owner or operator of the treatment facility must test the treatment residues (not an extract of such residues) to assure that the treatment residues meet the applicable treatment standards.

(6) If the waste or treatment residue will be further managed at a different treatment or storage facility, the treatment, storage or disposal facility sending the waste or treatment residue off-site must comply with the notice and certification requirements applicable to generators under this section.

(7) For wastes that are subject to the prohibitions under § 268.33(f) of this part and are not subject to the prohibitions set forth in § 268.32 of this part, with each shipment of such waste the owner or operator must notify any subsequent treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in § 268.33(f). The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The applicable prohibitions set forth in section 268.33(f);

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data, where available.

(8) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 266.20(b), the owner or operator of a treatment facility (the recycler) is not required to notify the receiving facility, pursuant to paragraph (b)(4) of this section. With each shipment of such wastes the owner or operator of the recycling facility must submit a certification described in paragraph (b)(5) of this section, and a notice which includes the information listed in paragraph (b)(4) of this section (except the manifest number) to the Regional Administrator, or his delegated representative. The recycling facility also must keep records of the name and location of each entity receiving the hazardous waste-derived product.

(c) The owner or operator of any land disposal facility disposing any waste subject to restrictions under this part must:

(1) Have copies of the notice and certifications specified in paragraph (a)

or (b) of this section, and the certification specified in § 268.8 if applicable.

(2) Test the waste, or an extract of the waste or treatment residue developed using the test method described in Appendix I of this part or using any methods required by generators under § 268.32 of this part, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in Subpart D of this part and all applicable prohibitions set forth in § 268.32 of this part or in RCRA section 3004(d). Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by § 264.13 or § 265.13.

(3) Where the owner or operator is disposing of any waste that is subject to the prohibitions under § 268.33(f) of this part but not subject to the prohibitions set forth in § 268.32, he must ensure that such waste is the subject of a certification according to the requirements of § 268.8 prior to disposal in a landfill or surface impoundment unit, and that such disposal is in accordance with the requirements of § 268.5(h)(2). The same requirement applies to any waste that is subject to the prohibitions under § 268.33(f) of this Part and also is subject to the statutory prohibitions in RCRA section 3004(d) or the codified prohibitions in § 268.32 of this Part.

7. Section 268.8 is added to read as follows:

§ 268.8 Landfill and surface impoundment disposal restrictions.

(a) Prior to May 8, 1990, wastes which are otherwise prohibited from land disposal under § 268.33(f) of this part may be disposed in a landfill or surface impoundment which is in compliance with the requirements of § 268.5(h)(2) provided that the requirements of this section are met.

(1) Prior to such disposal, the generator has made a good faith effort to locate and contract with treatment and recovery facilities practically available which provide the greatest environmental benefit.

(2) Such generator submits to the Regional Administrator a demonstration and certification that the requirements of paragraph (a)(1) of this section have been met. The demonstration must include a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates.

(i) If a generator determines that there is no practically available treatment for his waste, he must indicate so in his

demonstration, and provide a written discussion of why he was not able to obtain treatment or recovery for that waste. The generator must also provide the following certification:

I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(ii) If a generator determines that there are practically available treatments for his waste, he must contract to use the practically available technology that yields the greatest environmental benefit, as indicated in his demonstration. He must provide the following certification:

I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that I have contracted to treat my waste (or will otherwise provide treatment) by the practically available technology which yields the greatest environmental benefit, as indicated in my demonstration. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) Where the generator has determined that there is no practically available treatment for his waste prior to disposal, with the initial shipment of waste, such generator must submit a copy of the demonstration and the certification required in paragraph (a)(2)(A) of this section to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such a generator must retain on-site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(4) Where the generator has determined that there is practically available treatment for his waste prior to disposal, with the initial shipment of waste, such generator must submit a copy of the demonstration and the certification required in paragraph (a)(2)(B) of this section to the receiving facility. With each subsequent waste

shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such a generator must retain on-site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) After receiving the demonstration and certification, the Regional Administrator may request any additional information which he deems necessary to evaluate the certification.

(1) A generator who has submitted a certification under this section must immediately notify the Regional Administrator when he has knowledge of any change in the conditions which formed the basis of his certification.

(2) If, after review of the certification, the Regional Administrator determines that practically available treatment exists where the generator has certified otherwise, or that there exists some other method of practically available treatment yielding greater environmental benefit than that which the generator has certified, the Regional Administrator may invalidate the certification.

(3) If the Regional Administrator invalidates a certification, the generator must immediately cease further shipments of the waste, and inform all facilities that received the waste of such invalidation and keep records of such communication on-site in his files.

(c) A treatment, recovery or storage facility receiving wastes subject to a valid certification must keep copies of the generator's demonstration (if applicable) and certification in his operating record.

(1) The owner or operator of a treatment or recovery facility must certify that he has treated the waste in accordance with the generator's demonstration. The following certification is required:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with treatment as specified in the generator's demonstration. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment.

(2) The owner or operator of a treatment, recovery or storage facility must send a copy of the generator's demonstration (if applicable) and certification under § 268.8(a)(2), and certification under § 268.8(c)(1) (if applicable) to the facility receiving the waste or treatment residues.

(d) The owner or operator of a disposal facility must ensure that those wastes prohibited under § 263.33(f) are subject to a certification according to the requirements of this section prior to disposal in a landfill or surface impoundment, and that the units receiving such wastes must meet the minimum technological requirements of § 268.5(h)(2).

(e) Once the certification is received by the Regional Administrator, and provided that the wastes have been treated by the treatment (if any), determined by the generator to yield the greatest environmental benefit practically available, the wastes or treatment residuals may be disposed in a landfill or surface impoundment unit meeting the requirements of § 268.5(h)(2), unless otherwise prohibited by the Regional Administrator.

(Approved by the Office of Management and Budget under control number 2050-0085).

8. In § 268.12, the existing text is designated as paragraph (a) and paragraphs (b), (c) and (d) are added to read as follows:

§ 268.12 Identification of wastes to be evaluated by May 8, 1990.

(b) Wastewater residues (less than 1% total organic carbon and less than 1% suspended solids) resulting from the following well-designed and well-operated treatment methods for wastes listed in § 268.10 for which EPA has not promulgated wastewater treatment standards: metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction. The treatment standards applicable to wastes prohibited under §§ 268.30-268.33 of this part still apply.

(c) Leachate derived from the treatment, storage or disposal of wastes listed in § 268.10 for which EPA has not promulgated wastewater treatment standards, and contaminated ground water that contains such wastes. The treatment standards applicable to wastes prohibited under §§ 268.30-268.33 of this Part still apply.

(d) Hazardous wastes listed in § 268.10 which are mixed hazardous/radioactive wastes. The treatment standards applicable to wastes prohibited under §§ 268.30-268.32 of this part still apply.

SUBPART C—PROHIBITIONS ON LAND DISPOSAL

9. Section 268.30 is revised to read as follows:

§ 268.30 Waste specific prohibitions—Solvent wastes.

(a) Effective November 8, 1986, the spent solvent wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005, are prohibited under this part from land disposal (except in an injection well) unless one or more of the following conditions apply:

(1) The generator of the solvent waste is a small quantity generator of 100-1000 kilograms of hazardous waste per month; or

(2) The solvent waste is generated from any response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or any corrective action taken under the Resource Conservation and Recovery Act (RCRA), except where the waste is contaminated soil or debris; or

(3) The initial generator's solvent waste is a solventwater mixture, solvent-containing sludge or solid, or solventcontaminated soil (non-CERCLA or RCRA corrective action) containing less than 1 percent total F001-F005 solvent constituents listed in Table CCWE of § 268.41 of this part; or

(4) The solvent waste is a residue from treating a waste described in paragraphs (a)(1), (a)(2), or (a)(3) of this section; or the solvent waste is a residue from treating a waste not described in paragraphs (a)(1), (a)(2), or (a)(3) of this section provided such residue belongs to a different treatability group than the waste as initially generated and wastes belonging to such a treatability group are described in paragraph (a)(3) of this section.

(b) Effective November 8, 1988, the F001-F005 solvent wastes listed in paragraphs (a) (1), (2), (3), or (4) of this section are prohibited from land disposal.

(c) Effective November 8, 1990, the F001-F005 solvent wastes which are contaminated soil and debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under subtitle C of the

Resource Conservation and Recovery Act (RCRA) and the residues from treating these wastes are prohibited from land disposal. Between November 8, 1988, and November 8, 1990, these wastes may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(d) The requirements of paragraphs (a), (b), and (c) of this section do not apply if:

(1) The wastes meet the standards of Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes and units covered by the extension.

10. Section 268.31 is revised to read as follows:

§ 268.31 Waste specific prohibitions—Dioxin-containing wastes.

(a) Effective November 8, 1988, the dioxin-containing wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028, are prohibited from land disposal unless the following condition applies:

(1) The F020-F023 and F026-F028 dioxin-containing waste is contaminated soil and debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action taken under subtitle C of the Resource Conservation and Recovery Act (RCRA).

(b) Effective November 8, 1990, the F020-F023 and F026-F028 dioxin-containing wastes listed in paragraph (a)(1) of this section are prohibited from land disposal.

(c) Between November 8, 1988, and November 8, 1990, wastes included in paragraph (a)(1) of this section may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2) and all other applicable requirements of Parts 264 and 265 of this chapter.

(d) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes meet the standards of Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

11. In Section 268.32 paragraphs (d), (e), (f), (g), introductory text, and (h) are revised to read as follows:

§ 268.32 Waste specific prohibitions—California list wastes.

(d) The requirements of paragraphs (a) and (e) of this section do not apply until:

(1) July 8, 1989 where the wastes are contaminated soil or debris not resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or a corrective action taken under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Between July 8, 1987 and July 8, 1989, the wastes may be disposed in a landfill or surface impoundment only if such disposal is in compliance with the requirements specified in § 268.5(h)(2).

(2) November 8, 1990 where the wastes are contaminated soil or debris resulting from a response action taken under section 104 or 106 of CERCLA or a corrective action taken under Subtitle C of RCRA. Between November 8, 1988, and November 8, 1990, the wastes may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(e) Effective November 8, 1988, the following hazardous wastes are prohibited from land disposal (subject to any regulations that may be promulgated with respect to disposal in injection wells):

(1) Liquid hazardous wastes that contain HOCs in total concentration greater than or equal to 1,000 mg/l and are not prohibited under paragraph (a)(3) of this section; and

(2) Nonliquid hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg and are not wastes described in paragraph (d) of this section.

(f) Between July 8, 1987 and November 8, 1988, the wastes included in paragraphs (e)(1) and (e)(2) of this section may be disposed in a landfill or surface impoundment only if such disposal is in compliance with the requirements specified in § 268.5(h)(2).

(g) The requirements of paragraphs (a), (d), and (e) of this section do not apply if:

(h) The prohibitions and effective dates specified in paragraphs (a)(3), (d),

and (e) of this section do not apply where the waste is subject to a Part 268 Subpart C prohibition and effective date for a specified HOC (such as a hazardous waste chlorinated solvent, see e.g., § 268.30(a)).

12. Section 268.33 is added to read as follows:

§ 268.33 Waste specific prohibitions—First Third Wastes

(a) Effective August 8, 1988, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. F006 (nonwastewater), K001, K004 (nonwastewater), K008 (nonwastewater), K015, K016, K018, K019, K020, K021 (nonwastewater), K022 (nonwastewater), K024, K025, K030, K036 (nonwastewater), K037, K044, K045, nonexplosive K046 (nonwastewater), K047, K060 (nonwastewater), K061 (nonwastewater) containing less than 15% zinc, K062, non CaSO₄, K069 (nonwastewater), K083 (nonwastewater), K086 (solvent washes), K087, K099, K100, K101, K102, K103, and K104 are prohibited from land disposal (except in an injection well).

(1) Effective August 8, 1988 and continuing until August 7, 1990, K061 wastes containing 15% zinc or greater are prohibited from land disposal pursuant to the treatment standards specified in § 268.41 applicable to K061 wastes that contain less than 15% zinc.

(b) Effective August 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K048, K049, K050, K051, K052, K061 (containing 15% zinc or greater), and K071 are prohibited from land disposal.

(c) Effective August 8, 1990, the wastes specified in 40 CFR 268.10 having a treatment standard in Subpart D of this part based on incineration and which are contaminated soil and debris are prohibited from land disposal.

(d) Between November 8, 1988 and August 8, 1990, wastes included in paragraphs (b) and (c) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(e) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply if:

(1) The wastes meet the applicable standards specified in Subpart D of this Part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

(f) Between August 8, 1988, and May 8, 1990, the wastes specified in § 268.10 for which treatment standards under Subpart D of this Part are not applicable, including those wastes which are subject to the statutory prohibitions of RCRA section 3004(d) or codified prohibitions under § 268.32 of this Part, but not including wastes subject to a treatment standard under § 268.42 of this Part, are prohibited from disposal in a landfill or surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to § 268.8.

(g) To determine whether a hazardous waste listed in § 268.10 exceeds the applicable treatment standards specified in § 268.41 and § 268.43, the initial generator must test a representative sample of the waste extract or the entire waste depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste. If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal and all requirements of Part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

13. Section 268.40 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 268.40 Applicability of treatment standards.

(a) A restricted waste identified in § 268.41 may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using the test method in Appendix I of this part does not exceed the value shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste.

(c) A restricted waste identified in § 268.43 may be land disposed only if the constituent concentrations in the waste or treatment residue of the waste do not exceed the value shown in Table CCW of § 268.43 for any hazardous constituent listed in Table CCW for that waste.

14. In Table CCWE in § 268.41(a), in the column headed "F001-F005 spent solvents," "methylene chloride (from the pharmaceutical industry)" and its corresponding concentrations is deleted, and the following subtables to Table

CCWE are added in numerical order by EPA Hazardous Waste Number:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE—CONSTITUTENT CONCENTRATIONS IN WASTE EXTRACT

F006 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Cadmium.....	0.066
Chromium (Total).....	5.2
Lead.....	.51
Nickel.....	.32
Silver.....	.072
Cyanides (Total).....	Reserved
K001 nonwastewaters (see also Table in § 268.43)	Concentration (in mg/l)
Lead.....	0.51
K022 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Chromium (Total).....	5.2
Nickel.....	0.32
K046 nonwastewaters (Nonreactive Subcategory)	Concentration (in mg/l)
Lead.....	0.18
K048, K049, K050, K051 and K052 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Arsenic.....	0.004
Chromium (Total).....	1.7
Nickel.....	.048
Selenium.....	.025
K061 nonwastewaters (Low Zinc Subcategory—less than 15% total zinc)	Concentration (in mg/l)
Cadmium.....	0.14
Chromium (Total).....	5.2
Lead.....	.24
Nickel.....	.32
K061 nonwastewaters (High Zinc Subcategory—15% or greater total zinc): effective until 8/8/90	Concentration (in mg/l)
Cadmium.....	0.14
Chromium (Total).....	5.2
Lead.....	.24
Nickel.....	.32

K062 nonwastewaters	Concentration (in mg/1)
Chromium (Total).....	0.094
Lead.....	.37
K071 nonwastewaters	Concentration (in mg/1)
Mercury.....	0.025
K086 nonwastewaters (Solvent Washes Subcategory) see also Table CCW in § 268.43)	Concentration (in mg/1)
Chromium (Total).....	0.094
Lead.....	.37
K087 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/1)
Lead.....	0.51
K101 and K102 nonwastewaters (Low Arsenic Subcategory—less than 1% Total Arsenic) (see also Table CCW in § 268.43)	Concentration (in mg/1)
Cadmium.....	0.066
Chromium (Total).....	5.2
Lead.....	.51
Nickel.....	.32

15. In § 268.42 paragraph (a)(2) is revised to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

(a) * * *

(2) Nonliquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg and liquid HOC-containing wastes that are prohibited under § 268.32(e)(1) of this part must be incinerated in accordance with the requirements of Part 264, Subpart O or Part 265, Subpart O, or in boilers or industrial furnaces burning in accordance with applicable regulatory standards. These treatment standards do not apply where the waste is subject to a Part 268, Subpart C treatment standard for a specific HOC (such as a hazardous waste chlorinated solvent for which a treatment standard is established under § 268.41(a)).

16. Section 268.43 is amended by adding paragraphs (a) and (b) and Table CCW to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) Table CCW identifies the restricted wastes and the concentrations

of their associated hazardous constituents which may not be exceeded by the waste or treatment residual (not an extract of such waste or residual) for the allowable land disposal of such waste or residual.

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES

F001, F002, F003, F004 and F005 wastewaters (Pharmaceutical Industry)	Concentration (in mg/1)
Methylene chloride.....	0.44
F006 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total).....	Reserved
K001 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Naphthalene.....	8.0
Pentachlorophenol.....	37
Phenanthrene.....	8.0
Pyrene.....	7.3
Toluene.....	.14
Xylenes.....	.16
K001 wastewaters	Concentration (in mg/1)
Naphthalene.....	0.15
Pentachlorophenol.....	.88
Phenanthrene.....	.15
Pyrene.....	.14
Toluene.....	.14
Xylenes.....	.16
Lead.....	.037
K015 wastewaters	Concentration (in mg/1)
Anthracene.....	1.0
Benzal chloride.....	.28
Benzo (b and/or k) fluoranthene.....	.29
Phenanthrene.....	.27
Toluene.....	.15
Chromium (Total).....	.32
Nickel.....	.44
K016 nonwastewaters	Concentration (in mg/kg)
Hexachlorobenzene.....	28
Hexachlorobutadiene.....	5.6
Hexachlorocyclopentadiene.....	5.6
Hexachloroethane.....	28
Tetrachloroethene.....	6.0

K016 wastewaters	Concentration (in mg/1)
Hexachlorobenzene.....	0.033
Hexachlorobutadiene.....	.007
Hexachlorocyclopentadiene.....	.007
Hexachloroethane.....	.033
Tetrachloroethene.....	.007

K018 nonwastewaters	Concentration (in mg/kg)
Chloroethane.....	6.0
1,1-Dichloroethane.....	6.0
1,2-Dichloroethane.....	6.0
Hexachlorobenzene.....	28
Hexachlorobutadiene.....	5.6
Hexachloroethane.....	28
Pentachloroethane.....	5.6
1,1,1-Trichloroethane.....	6.0

K018 wastewaters	Concentration (in mg/1)
Chloroethane.....	0.007
Chloromethane.....	.007
1,1-Dichloroethane.....	.007
1,2-Dichloroethane.....	.007
Hexachlorobenzene.....	.033
Hexachlorobutadiene.....	.007
Pentachloroethane.....	.007
1,1,1-Trichloroethane.....	.007

K019 nonwastewaters	Concentration (in mg/kg)
Bis(2-chloroethyl)ether.....	5.6
Chlorobenzene.....	6.0
Chloroform.....	6.0
1,2-Dichloroethane.....	6.0
Hexachloroethane.....	28
Naphthalene.....	5.6
Phenanthrene.....	5.6
Tetrachloroethene.....	6.0
1,2,4-Trichlorobenzene.....	19
1,1,1-Trichloroethane.....	6.0

K019 wastewaters	Concentration (in mg/1)
Bis(2-chloroethyl)ether.....	0.007
Chlorobenzene.....	.006
Chloroform.....	.007
p-Dichlorobenzene.....	.008
1,2-Dichloroethane.....	.007
Fluorene.....	.007
Hexachloroethane.....	.033
Naphthalene.....	.007
Phenanthrene.....	.007
1,2,4,5-Tetrachlorobenzene.....	.017
Tetrachloroethene.....	.007
1,2,4-Trichlorobenzene.....	.023
1,1,1-Trichloroethane.....	.007

K020 nonwastewaters	Concentration (in mg/kg)
1,2-Dichloroethane.....	6.0
1,1,2,2-Tetrachloroethane.....	5.6

K020 nonwastewaters		Concentration (in mg/kg)
Tetrachloroethene		6.0
K020 wastewaters		Concentration (in mg/l)
1,2-Dichloroethane		0.007
1,1,2,2-Tetrachloroethane		.007
Tetrachloroethene		.007
K022 nonwastewaters (see also Table CCWE in § 268.41)		Concentration (in mg/kg)
Acetophenone		19
Sum of Diphenylamine and Diphenylnitrosamine		13
Phenol		12
Toluene		0.034
K024 nonwastewaters		Concentration (in mg/kg)
Phthalic acid		28
K024 wastewaters		Concentration (in mg/l)
Phthalic acid		0.54
K030 nonwastewaters		Concentration (in mg/kg)
Hexachlorobutadiene		5.6
Hexachloroethane		28
Hexachloropropene		19
Pentachlorobenzene		28
Pentachloroethane		5.6
1,2,4,5-Tetrachlorobenzene		14
Tetrachloroethene		6.0
1,2,4-Trichlorobenzene		19
K030 wastewaters		Concentration (in mg/l)
o-Dichlorobenzene		0.008
p-Dichlorobenzene		.008
Hexachlorobutadiene		.007
Hexachloroethane		.033
Pentachloroethane		.007
1,2,4,5-Tetrachlorobenzene		.017
Tetrachloroethene		.007
1,2,4-Trichlorobenzene		.023
K037 nonwastewaters		Concentration (in mg/kg)
Disulfoton		0.1
Toluene		28
K037 wastewaters		Concentration (in mg/l)
Disulfoton		0.003
Toluene		.028
K048 nonwastewaters (see also Table CCWE in § 268.41)		Concentration (in mg/kg)
Benzene		9.5
Benzo(a)pyrene		.84
Bis(2-ethylhexyl)phthalate		37
Chrysene		2.2
Di-n-butyl phthalate		4.2
Ethylbenzene		67
Naphthalene		[Reserved]
Phenanthrene		7.7
Phenol		2.7
Pyrene		2.0
Toluene		9.5
Xylenes		[Reserved]
Cyanides (Total)		1.8
K048 wastewaters		Concentration (in mg/l)
Benzene		0.011
Benzo(a)pyrene		.047
Bis(2-ethylhexyl)phthalate		.043
Chrysene		.043
Di-n-butyl phthalate		.060
Ethylbenzene		.011
Fluorene		.050
Naphthalene		.033
Phenanthrene		.039
Phenol		.047
Pyrene		.045
Toluene		.011
Xylenes		.011
Chromium (Total)		.20
Lead		0.37
K049 nonwastewaters (see also Table CCWE in § 268.41)		Concentration (in mg/kg)
Anthracene		6.2
Benzene		9.5
Benzo(a)pyrene		0.84
Bis(2-ethylhexyl)phthalate		37
Chrysene		2.2
Ethylbenzene		67
Naphthalene		[Reserved]
Phenanthrene		7.7
Phenol		2.7
Pyrene		2.0
Toluene		9.5
Xylenes		[Reserved]
Cyanides (Total)		1.8
K049 wastewaters		Concentration (in mg/l)
Anthracene		0.039
Benzene		.011
Benzo(a)pyrene		.047
Bis(2-ethylhexyl)phthalate		.043
Carbon disulfide		.011
Chrysene		.043
2,4-Dimethylphenol		.033
Ethylbenzene		.011
Naphthalene		.033
Phenanthrene		.039
K049 wastewaters		Concentration (in mg/l)
Phenol		.047
Pyrene		.045
Toluene		.011
Xylenes		.011
Chromium (Total)		.20
Lead		.037
K050 nonwastewaters (see also Table CCWE in § 268.41)		Concentration (in mg/kg)
Benzo(a)pyrene		0.84
Phenol		2.7
Cyanides (Total)		1.8
K050 wastewaters		Concentration (in mg/l)
Benzo(a)pyrene		0.047
Phenol		.047
Chromium (Total)		.20
Lead		.037
K051 nonwastewaters (see also Table CCWE in § 268.41)		Concentration (in mg/kg)
Anthracene		6.2
Benzene		9.5
Benzo(a)anthracene		1.4
Benzo(a)pyrene		.84
Bis(2-ethylhexyl)phthalate		37
Chrysene		2.2
Di-n-butyl phthalate		4.2
Ethylbenzene		67
Naphthalene		[Reserved]
Phenanthrene		7.7
Phenol		2.7
Pyrene		2.0
Toluene		9.5
Xylenes		[Reserved]
Cyanides (Total)		1.8
K051 wastewaters		Concentration (in mg/l)
Acenaphthene		0.050
Anthracene		.039
Benzene		.011
Benzo(a)anthracene		.043
Benzo(a)pyrene		.047
Bis(2-ethylhexyl) phthalate		.043
Chrysene		.043
Di-n-butyl phthalate		.060
Ethylbenzene		.011
Fluorene		.050
Naphthalene		.033
Phenanthrene		.039
Phenol		.047
Pyrene		.045
Toluene		.011
Xylenes		.011
Chromium (Total)		.20
Lead		.037

K052 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Benzene.....	9.5
Benzo(a)pyrene.....	0.84
o-Cresol.....	2.2
p-Cresol.....	0.90
Ethylbenzene.....	67
Naphthalene.....	[Reserved]
Phenanthrene.....	7.7
Phenol.....	2.7
Toluene.....	9.5
Xylenes.....	[Reserved]
Cyanides (Total).....	1.8

K052 wastewaters	Concentration (in mg/l)
Benzene.....	0.011
Benzo(a)pyrene.....	.047
o-Cresol.....	.011
p-Cresol.....	.011
2,4-Dimethylphenol.....	.033
Ethylbenzene.....	.011
Naphthalene.....	.033
Phenanthrene.....	.039
Phenol.....	.047
Toluene.....	.011
Xylenes.....	.011
Chromium (Total).....	.20
Lead.....	.037

K062 wastewaters	Concentration (in mg/l)
Chromium (Total).....	0.32
Lead.....	.04
Nickel.....	.44

K071 wastewaters	Concentration (in mg/l)
Mercury.....	0.030

K086 nonwastewaters—Solvent Washes Subcategory (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acetone.....	0.37
bis(2-ethylhexyl) phthalate.....	.49
n-Butyl alcohol.....	.37
Cyclohexanone.....	.49
1,2-Dichlorobenzene.....	.49
Ethyl acetate.....	.37
Ethyl benzene.....	.031
Methanol.....	.37
Methylene chloride.....	.037
Methyl ethyl ketone.....	.37
Methyl isobutyl ketone.....	.37
Naphthalene.....	.49
Nitrobenzene.....	.49
Toluene.....	.031
1,1,1-Trichloroethane.....	.044
Trichloroethylene.....	.031
Xylenes.....	.015

K086 wastewaters—Solvent Washes Subcategory	Concentration (in mg/l)
Acetone.....	0.015
bis(2-ethylhexyl)phthalate.....	.044

K086 wastewaters—Solvent Washes Subcategory	Concentration (in mg/l)
n-Butyl alcohol.....	.031
Cyclohexanone.....	.022
1,2-Dichlorobenzene.....	.044
Ethyl acetate.....	.031
Ethyl benzene.....	.015
Methanol.....	.031
Methylene chloride.....	.031
Methyl ethyl ketone.....	.031
Methyl isobutyl ketone.....	.031
Naphthalene.....	.044
Nitrobenzene.....	.044
Toluene.....	.029
1,1,1-Trichloroethane.....	.031
Trichloroethylene.....	.029
Xylenes.....	.015
Chromium (Total).....	.32
Lead.....	.037

K087 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acenaphthalene.....	3.4
Benzene.....	.071
Chrysene.....	3.4
Fluoranthene.....	3.4
Indeno (1,2,3-cd) pyrene.....	3.4
Naphthalene.....	3.4
Phenanthrene.....	3.4
Toluene.....	.65
Xylenes.....	.070

K087 wastewaters	Concentration (in mg/l)
Acenaphthalene.....	0.028
Benzene.....	.014
Chrysene.....	.028
Fluoranthene.....	.028
Indeno (1,2,3-cd) pyrene.....	.028
Naphthalene.....	.028
Phenanthrene.....	.028
Toluene.....	.008
Xylenes.....	.014
Lead.....	.037

K099 nonwastewaters	Concentration (in mg/kg)
2,4-Dichlorophenoxyacetic acid.....	1.0
Hexachlorodibenzo-p-dioxins.....	.001
Hexachlorodibenzofurans.....	.001
Pentachlorodibenzo-p-dioxins.....	.001
Pentachlorodibenzofurans.....	.001
Tetrachlorodibenzo-p-dioxins.....	.001
Tetrachlorodibenzofurans.....	.001

K099 wastewaters	Concentration (in mg/l)
2,4-Dichlorophenoxyacetic acid.....	1.0
Hexachlorodibenzo-p-dioxins.....	.001
Hexachlorodibenzofurans.....	.001
Pentachlorodibenzo-p-dioxins.....	.001
Pentachlorodibenzofurans.....	.001
Tetrachlorodibenzo-p-dioxins.....	.001
Tetrachlorodibenzofurans.....	.001

K101 nonwastewaters (Low Arsenic Subcategory—less than 1% total arsenic) (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Ortho-Nitroaniline.....	14

K101 wastewaters	Concentration (in mg/l)
Ortho-Nitroaniline.....	0.27
Arsenic.....	2.0
Cadmium.....	.24
Lead.....	.11
Mercury.....	.027

K102 nonwastewaters (Low Arsenic Subcategory—less than 1% total arsenic) (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
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Ortho Nitrophenol.....	13
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K102 wastewaters	Concentration (in mg/l)
Ortho-Nitrophenol.....	0.028
Arsenic.....	2.0
Cadmium.....	.24
Lead.....	.11
Mercury.....	.027

K103 nonwastewaters	Concentration (in mg/kg)
Aniline.....	5.6
Benzene.....	6.0
2,4-Dinitrophenol.....	5.6
Nitrobenzene.....	5.6
Phenol.....	5.6

K103 wastewaters	Concentration (in mg/l)
Aniline.....	4.5
Benzene.....	.15
2,4-Dinitrophenol.....	.61
Nitrobenzene.....	.073
Phenol.....	1.4

K104 nonwastewaters	Concentration (in mg/kg)
Aniline.....	5.6
Benzene.....	6.0
2,4-Dinitrophenol.....	5.6
Nitrobenzene.....	5.6
Phenol.....	5.6
Cyanides (Total).....	1.8

K104 wastewaters	Concentration (in mg/l)
Aniline.....	4.5
Benzene.....	.15
2,4-Dinitrophenol.....	.61

K104 wastewaters	Concentration (in mg/l)
Nitrobenzene.....	.073
Phenol.....	1.4
Cyanides (Total).....	2.7

No Land Disposal for:

- K004 Nonwastewaters [Based on No Generation]
- K008 Nonwastewaters [Based on No Generation]
- K015 Nonwastewaters [Based on No Ash]
- K021 Nonwastewaters [Based on No Generation]
- K025 Nonwastewaters [Based on No Generation]
- K036 Nonwastewaters [Based on No Generation]
- K044 [Based on Reactivity]
- K045 [Based on Reactivity]
- K047 [Based on Reactivity]
- K060 Nonwastewaters [Based on No Generation]
- K061 Nonwastewaters—High Zinc Subcategory (greater than or equal to 15% total zinc) [Based on Recycling]; effective 8/8/90
- K069 Nonwastewaters—Non-Calcium Sulfate Subcategory [Based on Recycling]
- K083 Nonwastewaters—No Ash Subcategory (less than 0.01% total ash) [Based on No Ash]
- K100 Nonwastewaters [Based on No Generation]

(b) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

17. In § 268.44, paragraphs (h) through (l) are added to read as follows:

§ 268.44 Variance from a treatment standard.

.....

(h) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste generated under conditions specific to only one site cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may apply to the Assistant Administrator of the Office of Solid Waste and Emergency Response, or his delegated representative, for a site-specific variance from a treatment standard. The applicant for a site-specific variance must demonstrate that because the physical or chemical properties of the waste differs significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.

(i) Each application for a site-specific variance from a treatment standard must include the information in § 260.20(b)(1)–(4);

(j) After receiving an application for a site-specific variance from a treatment standard, the Assistant Administrator, or his delegated representative, may request any additional information or samples which may be required to evaluate the application.

(k) A generator, treatment facility, or disposal facility that is managing a waste covered by a site-specific variance from a treatment standard must comply with the waste analysis requirements for restricted wastes found under § 268.7.

(l) During the application review process, the applicant for a site-specific variance must comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.

Subpart E—Prohibitions on Storage

18. Section 268.50 is amended by revising paragraph (d) to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

.....

(d) The prohibition in paragraph (a) of this section does not apply to waste which are the subject of an approved petition under § 268.6, a nationwide variance under Subpart C of this part, an approved case-by-case extension under § 268.5, or a valid certification under § 268.8.

.....

V. In Part 271:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for Part 271 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

2. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of promulgation in the Federal Register:

§ 271.1 Purpose and scope.

.....

(j)

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
.....
[Insert date of promulgation of final rule in the Federal Register].	Land disposal restrictions for First Third 53 FR [Insert Federal Register page numbers]	Aug. 8, 1988.	
.....	wastes.	.....

3. Section 271.1(j) is amended by adding the date of publication and the

Federal Register page numbers to the following entry in Table 2.

§ 271.1 Purpose and scope.

.....

(j)

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
August 8, 1988.....	Land disposal restrictions on 1/3 of listed wastes.	3004(g)(6)(A).....	[Insert date of publication] 53 FR [insert Federal Register page numbers]

[FR Doc. 88-18298 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

Registered Federal Letter

Wednesday
August 17, 1988

Part III

Department of Housing and Urban Development

24 CFR Part 570

**Community Development Work Study
Program; Proposed Rule and Notice of
Fund Availability**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-88-1406; FR-2475]

Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amends section 107 of the Housing and Community Development Act of 1974 to authorize the Community Development Work Study Program (CDWSP). Elsewhere in today's issue of the *Federal Register*, HUD is publishing a notice of funding availability for CDWSP announcing the availability of \$3 million from amounts that were appropriated for CDWSP in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (section 101(f), Pub. L. 100-202, approved December 22, 1987) (1988 Appropriations Act) and stating the requirements that will govern the use of these funds provided under the 1988 appropriations Act. This notice of proposed rulemaking references that NOFA, states HUD's intention to use the requirements contained in the NOFA as the basis for a final rule amending 24 CFR Part 570, and invites public comment on the announced requirements.

DATES: Comments on the proposed requirements must be received by October 17, 1988.

ADDRESS: Interested persons are invited to submit comments regarding the proposed requirements to the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410,

telephone (202) 755-6092. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD, for several years, has funded a work study type program under authority of the Secretary's discretionary fund to provide grants to qualified entities for the provision of assistance to governmental units in carrying out programs under Title I of the Housing and Community Development Act of 1974 (the Act). (See section 107(b)(4) of the Act). The grants were made to institutions of higher education and metropolitan planning organizations to provide educational assistance in the fields of community development to minority and economically disadvantaged students who were to be employed by governmental entities in the administration of Title I funds. HUD's technical assistance program regulations implementing section 107(b)(4) of the Act are found at 24 CFR 570.402.

Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amended the Housing and Community Development Act of 1974 (the Act) to add a new section 107(c). This section authorizes a new Community Development Work Study Program (CDWSP). Under this section HUD is authorized to provide grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, and community management.

Elsewhere in today's issue of the *Federal Register*, HUD is publishing a notice of funding availability announcing the availability of \$3 million for CDWSP from amounts appropriated for CDWSP in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (section 101(f), Pub. L. 100-202, approved December 22, 1987) (1988 Appropriations Act). The notice also announces the requirements that will govern funds made available under the 1988 Appropriations Act. The requirements reflect the existing work study program requirements without significant changes.

HUD intends to use today's NOFA as the basis for a final rule amending 24 CFR Part 570 and establishing requirements for CDWSP. For this reason, HUD is inviting public comment

on the requirements contained in the NOFA, so that the final rule on the subject matter will have the benefit of public participation.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 58, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Both small and large entities are eligible for funding under the program. Since the total number of entities that will be funded under the program will be few and will include both small and large recipients, HUD does not believe that a significant number of small entities will be affected by this program.

This rule was not listed in the Department's Semiannual Agenda of Regulations published October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the *Federal Register*.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low- and moderate-income housing, New communities, Pockets of Poverty, Small cities.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 25, 1988.

Jack R. Stokvis,

*General Deputy Assistant Secretary for
Community Planning and Development.*

[FR Doc. 88-18495 Filed 8-16-88; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Community Planning and Development**

[Docket No. N-88-1827; FR-2510]

Community Development Work Study Program

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amends section 107 of the Housing and Community Development Act of 1974 to authorize the Community Development Work Study Program (CDWSP). This notice announces the requirements that will govern the use of \$3 million for CDWSP from amounts that were appropriated in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (section 101(f), Pub. L. 100-202, approved December 22, 1987). Elsewhere in today's issue of the *Federal Register*, HUD has published a notice of proposed rulemaking for CDWSP.

DATE: This notice is effective August 17, 1988.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6092. This is not a toll-free number. Application packages (requests for grant application) may be obtained after October 1, 1988 at the following address: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW. Room 5252, Washington, DC 20410.

SUPPLEMENTARY INFORMATION:**Background**

HUD, for several years, has funded a work study type program under authority of the Secretary's discretionary fund to provide grants to qualified entities for the provision of assistance to governmental units in carrying out programs under Title I of the Housing and Community Development Act of 1974 (the Act). (See section 107(b)(4) of the Act.) The grants were made to institutions of higher education and metropolitan planning organizations to provide educational

assistance in the fields of community development to minority and economically disadvantaged students who were to be employed by governmental entities in the administration of Title I funds. HUD's technical assistance program regulations implementing section 107(b)(4) of the Act are found at 24 CFR 570.402.

Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amended the Housing and Community Development Act of 1974 (the Act) to add a new section 107(c). This section authorizes a new Community Development Work Study Program (CDWSP). Under this section HUD is authorized to provide grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, and community management.

In the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (section 101(f), Pub. L. 100-202, approved December 22, 1987) (1988 appropriations Act), \$3 million was provided for CDWSP.

Purpose of Notice

This notice announces the requirements that will govern the use of funds appropriated for CDWSP for fiscal year 1988. HUD believes good cause exists for making these requirements effective for fiscal year 1988 without prior public comment. This approach is appropriate because the notice incorporates the existing work study program requirements without significant changes. The few changes that are included are generally in response to statutory changes. For example, the technical assistance work study program required students to work for two years after graduation in a governmental agency that was using Title I community development funds, or repay the assistance. This requirement was imposed to ensure that the governmental unit received assistance in carrying out its Title I program, as required by section 107(b)(4) of the Act. New section 107(c) does not contain such a requirement. Accordingly, the employment/repayment requirement has been dropped. (Students are, however, strongly encouraged to obtain such employment for two years following graduation and are required to

repay tuition support and additional support if the student's participation in CDWSP is terminated at any time before the completion of the two-year term of the student's program.) Additionally, in accordance with 1987 Act, the new program adds States as eligible recipients and makes assistance available for undergraduate studies under limited circumstances.

HUD also believes that this approach is justified because the failure to make these requirements effective immediately would prevent the use of CDWSP funds during the 1989-90 school year. The time period remaining before the end of the 1988-89 school year will not permit HUD to publish proposed requirements, respond to public comments, publish a notice containing revised requirements, and select recipients, and permit the recipients to bring their program into operation. Today's notice will make funds available to recipients at the earliest possible date (*i.e.*, the second semester of the 1988-89 school year). Elsewhere in today's issue of the *Federal Register*, HUD is publishing a proposed rulemaking for CDWSP.

This notice also solicits applications for the use of the \$3 million in funding. The application requirements and projected filing deadlines are set forth in section VI. of the program description below. Applicants may apply for funds for programs that begin either in the Spring 1989 or Fall 1989 semester.

CDWS Program Description*I. Applicability and objectives*

Under the Community Development Work Study Program, HUD will make grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning or community management.

The primary objectives of the program are to attract minority and economically disadvantaged students to careers in community and economic development, community planning, and community management, and to provide a cadre of well-qualified professionals to plan, implement, and administer local community development programs.

II. Definitions

The following definitions apply to CDWSP:

Applicant means an institution of higher education, a State, or areawide planning organization that submits an application for assistance under CDWSP.

Areawide planning organization (APO) means an organization authorized by law or by interlocal agreement to undertake planning and other activities for a metropolitan or nonmetropolitan area.

CDWSP means the Community Development Work Study Program established under section 501(b)(2) of the Housing and Community Development Act of 1987 (approved February 5, 1988, Pub. L. 100-242).

Community development academic program or academic program means an undergraduate or graduate degree program in community and economic development, community planning, community management or other related fields of study. Related fields include public administration, public policy, urban economics, urban management, or urban planning, and exclude social and humanistic fields such as law, economics (except for urban economics), psychology, education, and history. Community development academic program or academic program does not include academic programs that offer joint fields of study in related and unrelated fields.

Economically disadvantaged student means a student who satisfies all applicable financial need guidelines establishes at the participating institution of higher education.

HUD means the Department of Housing and Urban Development.

Institution of higher education means a public or private educational institution that offers graduate or undergraduate degrees in a community development academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education under 34 CFR Part 603.

Metropolitan area means a metropolitan statistical area, as established by the Office of Management and Budget.

Minority student means a student who is Black, an American Indian/Alaskan Native, a Hispanic, or an Asian/Pacific Islander.

Recipient means an approved applicant that executes a grant agreement with HUD.

III. Assistance provided

(a) In General

Under CDWSP, HUD will provide funding in the form of grants to recipients to enable the recipients to make assistance available to eligible students. Grants will be provided to cover the costs of student assistance and for an administrative allowance.

(b) Cost of Student Assistance

Grants will be made to recipients to cover the costs of assistance provided to eligible students in the form of students stipends; tuition support; and additional support. The amount of the grant for student assistance shall not exceed the actual costs incurred and the limitations set forth below.

(1) *Stipend.* Recipients may provide a stipend to eligible students. The amount of the student stipend will be based upon the prevailing hourly rate for initial entry positions in the community and economic development field and the number of hours worked by the student at the work placement assignment. The maximum amount of the student stipend that may be provided under the program is \$6,000 per year for an undergraduate student, and \$9,000 per year for a graduate student.

(2) *Tuition support.* Student assistance may be made available to cover the costs of tuition at the participating institution of higher education. The maximum amount of the tuition support is limited to the tuition charged at the participating institution of higher education, and may not exceed \$3,000 per year for an undergraduate student and \$3,500 per year for a graduate student.

(3) *Additional support.* The recipient may provide additional support for books, and support for travel related to the academic program, work placement assignment, or attendance at conferences sponsored by professional organizations in the field of community and economic development. The maximum amount of additional support is limited to \$1,000 per year for an undergraduate student and \$1,500 per year for a graduate student.

(c) Administrative Allowance

HUD will provide an allowance to recipients to cover the administrative costs of the program. The administrative allowance is \$1,000 per year for each student participating in the program.

(d) Number of Students Assigned

The minimum number of students that may be assisted under CDWSP is three students per participating institution of higher education. If an areawide

planning organization or State receives assistance for a program that is conducted by two or more institutions of higher education, as described in section IV.(a)(1)(B) below, each participating institution must have a minimum of three students in the program. The maximum number of students that may be assisted under CDWSP is ten students per participating institution of higher education.

IV Eligibility and Responsibilities of Program participants

(a) Recipient

(1) *Eligibility.* (i) The following organizations are eligible to apply for assistance under the program:

(A) Institutions of higher education. Institutions of higher education offering graduate degrees in a community development academic program are eligible for assistance under CDWSP. Institutions of higher education that offer undergraduate degrees in a community development academic program are eligible if the institution is located in a metropolitan area and no institution of higher education located in the metropolitan area offers graduate degrees in a community development academic program, or if the institution is located in a nonmetropolitan area of a State and no institution of higher education located in the nonmetropolitan area offers graduate degrees in a community development academic program.

(B) Areawide Planning Organizations and States. An areawide planning organization or a State may apply for assistance for a program that will be conducted by two or more institutions of higher education.

(1) Institutions of higher education participating in a APO program must be located within the metropolitan or nonmetropolitan area served by the APO. Institutions of higher education participating in a State program must be located within the State.

(2) Except as provided below, participating institutions must offer graduate degrees in a community development academic program. Programs involving a participating institution that offers only undergraduate degrees in a community development academic program are eligible under the following circumstances: (a) in the case of institutions participating in an APO program, no institution of higher education located within the metropolitan or nonmetropolitan area served by the APO offers graduate degrees in a community development

academic program; or (b) in the case of institutions participating in a State program, no institution of higher education located within the metropolitan or nonmetropolitan area in which the institution offering undergraduate degrees is located offers graduate degrees in a community development academic program.

(ii) If a State applies for funding, institutions of higher education located in the State are not eligible recipients. If an APO applies for funding, institutions of higher education located in the metropolitan area or nonmetropolitan area served by the APO are not eligible recipients. Such institutions, however, may receive assistance through participation in an APO or State program.

(iii) To be eligible in future funding competitions for CDWSP, recipients will be required to maintain a 50 percent rate of graduation from a CDWSP-funded academic program.

Note: The graduation rate will also be considered in the ranking of applications under section VII.(b)(1).

(2) *Recipient responsibilities.* The recipient is responsible for the administration of the program, for compliance with all program requirements, and for the coordination of program activities carried out by the work placement agencies and (if the recipient is an APO or State), the participating institutions of higher education. Specific responsibilities include, but are not limited to, the following:

(i) *Recruitment and selection of students.* The recipient is responsible for the recruitment and selection of students for participation in CDWSP. The recipient shall establish recruitment procedures that will identify eligible minority and economically disadvantaged students pursuing a career in community and economic development, and make such students aware of the availability of assistance opportunities. The recipient must select students in accordance with the procedures described in section V.(a) below, before the beginning of the semester for which funding has been provided.

(ii) *Selection of work placement agencies.* The recipient is responsible for the recruitment and selection of work placement agencies, and for the negotiation and execution of agreements covering each work placement assignment. (The requirements of the work placement agreement are set forth in section VIII., below)

(iii) *Referral of students.* The recipient is responsible for the referral of

participating students to the work placement assignments.

(iv) *Seminars.* The recipient must provide regularly scheduled seminars for participating students. The purpose of the seminars is to relate the work experience provided under CDWSP to the educational experience in the student's academic program, and to address career planning and permanent job placement. At least one seminar each semester or quarter must address student obligations under CDWSP.

(v) *Assignment of staff.* The recipient must assign sufficient staff to administer and supervise the program on a day-to-day basis, and, where the recipient is an APO or State, to coordinate the activities of the work study coordinating committee.

(vi) *Student employment following graduation.* The recipient must encourage participating students to obtain employment for a minimum of two years after graduation with a unit of State or local government, Indian tribe or nonprofit private organization that receives community development funds. The degree to which recipients successfully encourage such employment will be considered as a selection factor under section VII.(b)(4) in future funding competitions.

(vii) *Reports and recordkeeping.* The recipient must keep records and make such reports as HUD may require. All such records must be retained by the recipient for a period of three years following the expiration of the grant. At a minimum, HUD will require recipients to:

(A) submit management and work plans including schedules for major activities, student monitoring procedures, and the assignment of staff to the program.

(B) submit the following information for each student participating in the program: information describing the student's racial, ethnic and income characteristics; the student's academic, placement and employment status; the amount of assistance provided to the student; any amount of assistance provided to the student under CDWSP that was required to be repaid to the institution; and the amount of such assistance that has actually been repaid. Such information must be submitted upon the completion of each academic school term for the institution until all assisted students have graduated or repaid all CDWSP funds to the recipient.

(viii) *Other Federal requirements.* The recipient must comply with all other applicable Federal requirements, including the requirements of 24 CFR 570.601 and 570.602 (nondiscrimination), 570.609 (debarred, suspended or

ineligible contractors), 570.610 (uniform administrative procedures and cost principles) and 570.611 (conflicts of interest).

(ix) *APO and State responsibilities.* If the recipient is an APO or State, the recipient has the following additional responsibilities:

(A) The recipient must establish a committee to coordinate activities between program participants. The committee will be chaired by a representative of the recipient. Other members shall include representatives of the participating institutions of higher education, work placement agencies, participating students, and HUD, and may include advisory members as appropriate. The committee shall advise the recipient on policy matters, assist the recipient in ranking and selection of participating students, and review disputes concerning compliance with program agreements and performance.

(B) The recipient must allocate the assistance awarded under the program to the participating institutions of higher education. APOs and States may not make fractional awards to institutions. (I.e., if assistance is awarded to support seven students, the APO or State may not award 3.5 student awards to Institution A and 3.5 student awards to Institution B.)

(b) Institutions of Higher Education

Institutions of higher education participating in a program are responsible for providing its educational component. Where the recipient is an APO or State, the institution of higher education shall assist the APO or State in the administration and operation of the program. Responsibilities include assisting the recipient in the selection of students by determining the eligibility of students for the academic program, and by making the analysis of students under the financial need guidelines established by the institution. Institutions of higher education must comply with all other applicable Federal requirements, including the requirements of 24 CFR 570.601 and 570.602 (nondiscrimination), 570.609 (debarred, suspended or ineligible contractors), 570.610 (uniform administrative procedures and cost principles) and 570.611 (conflicts of interest).

(c) Work Placement Agencies

(1) *Eligibility.* To participate in CDWSP, work placement agencies must be an agency of a State or unit of general local government, an areawide planning organization, an Indian tribe, or a private nonprofit organization

involved in comprehensive planning, land use, community development or housing activities.

(2) *Responsibilities.* Work placement agencies have the following responsibilities under the program:

(i) Work placement agencies must provide practical experience and training in the community and economic development, community planning, or community management field to participating students through work placement assignments. Work placement assignments must offer students experience in planning, developing and administering a local community or economic development program. Work placement agencies must assure that work assignments involve substantive duties that will further the student's career goals.

(ii) Work placement agencies must consult with the institution of higher education (and the APO or State, where an APO or State is the recipient) to ensure that the student's work placement assignment meets the objectives described in paragraph (i) above.

(iii) Work placement agencies must provide a number of work placement assignments that exceeds the number of students assigned to the agency and must rotate student work placement assignments among students in order to provide a wide choice of work experience.

(iv) Work placement agencies must require each student to devote sufficient time to the work placement assignment. Generally, a minimum of 12 to 20 hours per week (including seminar attendance) will be required. Work placement agencies may provide flexibility in the work period (e.g., full-time work placements assignments may be made during the summer or during a semester or quarter), if such a schedule is consistent with the requirements of the student's community development academic program. However, a participating student may receive the stipend payment only during the period that the student is placed with the work placement agency.

(v) Work placement agencies shall comply with all other applicable Federal requirements, including the requirements of 24 CFR 570.601 and 570.602 (nondiscrimination), 570.609 (debarred, suspended or ineligible contractors), 570.610 (uniform administrative procedures and cost principles) and 570.611 (conflicts of interest).

(vi) Work placement agencies must maintain such records as HUD may require.

V. Student participation

(a) Student Selection

(1) *Application procedures.* Students apply directly to recipients receiving grants under CDWSP. Students will be selected in accordance with the eligibility requirements and selection procedures set out in this notice.

(2) *Eligibility.* To be eligible for participation in the program, the student:

(i) Must be an economically disadvantaged student.

(ii) Must be a full-time student enrolled in the first year of graduate study in a community development academic program at the participating institution of higher education. If an institution of higher education participating in CDWSP offers only undergraduate degrees in a community development academic program, the individual must be a junior enrolled full-time in an undergraduate degree program. Individuals enrolled in doctoral programs are ineligible.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in the community development academic program and in work placement assignments, and to comply with the professional standards set by the recipient and the work placement agencies.

(iv) May not have previously participated in CDWSP.

(v) Must provide appropriate written evidence that he or she is lawfully admitted for permanent residence in the United States, if the individual is not a citizen.

(3) *Selection.* In selecting among eligible students, the recipient must consider the extent to which each student has demonstrated:

(i) Financial need under the applicable financial need guidelines established at the institution of higher education;

(ii) An interest in, and commitment to, a professional career in community and economic development, community planning or community management; and

(iii) The ability satisfactorily to complete academic and work placement responsibilities under CDWSP.

(b) Student Responsibilities

(1) *Academic and work placement responsibilities.* Each student must enroll in a two-year program of course work. A student's academic and work placement responsibilities include: full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community development academic program and in work placement

assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. A student's participation in CDWSP will be terminated for failure to meet these responsibilities and standards. If a student's participation is terminated, the student will be ineligible for further CDWSP assistance and will be required to repay to the recipient any tuition support and additional support received under section II.(b) (2) or (3) above. The student, however, will not be required to repay the stipend received under section II.(b)(1) above.

(2) *Responsibilities after graduation.* Each student must agree to make a good-faith effort to obtain employment with a unit of State or local government or Indian tribe administering community development programs, or a non-profit private organization that receives community development funds. The term of such employment should be for at least two consecutive years following graduation from the academic program. If the student fails to obtain such employment, the student will not be required to repay the assistance received.

VI. Application Process

HUD has developed an application package (request for grant application) describing the information that applicants for CDWSP assistance must submit which should be available after October 1, 1988. The application will set forth the deadlines for the submission of applications. The application package will be provided upon the written request of any party made to: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW. Room 5252, Washington, DC 20410.

VII. Selection Process

(a) Threshold

To be eligible for ranking, applicants must meet each of the threshold criteria described below.

(1) *Proper submission.* The application must be filed in the application form prescribed by HUD, and within the time periods established under this notice.

(2) *Eligibility.* Each applicant must demonstrate that it is eligible to participate, and must establish the eligibility of participating institutions of higher education and work placement agencies.

(3) *Capacity.* The application must demonstrate that each entity that will participate in the program as a recipient, an institution of higher education or a

work placement agency has the ability and legal capacity to carry out its respective activities under CDWSP.

(b) Ranking

In the second step of the selection process, all applications that meet the above threshold requirements will be placed in priority funding order, based on the following ranking criteria.

(1) *Academic program.* (i) Quality of academic program. HUD will consider the quality of the academic program offered by the institution of higher education, in term of course offerings, academic requirements for students, and the appropriateness of the curriculum for preparing students for a career in community or economic development, community planning, or community management.

(ii) Academic supervision. HUD will consider the qualifications of the personnel supervising students' progress in the academic program and the amount of time that will be committed to students participating in CDWSP, to determine the extent to which students participating in the program will receive adequate counseling and guidance in the academic program.

(iii) Adequacy of resources. HUD will review information regarding the resources to be committed by the institution of higher education to the academic program, to determine the adequacy of the facilities and equipment that the institution plans to use in connection with the academic program.

(iv) Rate of graduation. In future funding competitions, HUD will consider the rate of graduation from a CDWSP funded academic program in assessing the academic program.

(2) *Work experience.* HUD will review the work experience that will be provided to participating students under CDWSP, and will consider the extent to which: (i) The participating student will receive a sufficient number and variety of work placement assignments; (ii) the assignments will provide practical and useful experience to students participating in the program; and (iii) the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management.

(3) *Seminars.* HUD will review the seminars proposed by the applicant to determine the extent to which proposed seminars will relate the experience provided under the work placement assignments with the educational experience provided under the academic program, and will address career planning and permanent job placement.

(4) *Permanent employment.* HUD will consider the extent to which the proposed program, as a whole, will lead participating students directly and immediately to permanent employment in community or economic development, community planning, or community management upon completion of the program. In making this determination, HUD will consider such factors as the past placement rates in similar programs administered by the applicant and the availability of job placement services to participating students.

(5) *Applicant's administrative ability.* HUD will consider the degree to which an applicant will be able effectively to coordinate and administer the program. In making this determination, HUD will examine the applicant's past experience in administering similar programs, the qualifications of the applicant's administrative and support personnel, and the amount of time the personnel will devote to the program, and the facilities and equipment that will be used in the administration of the program.

(6) *Commitment to meeting the needs of minority and economically disadvantaged students.* (i) HUD will consider the recipient's commitment to meeting the needs of minority and economically disadvantaged students. In making this determination, HUD will consider:

(A) The degree to which the proposed recruitment plan will effectively identify and attract qualified minority and economically disadvantaged students to the program.

(B) The extent of the commitment evidenced by the institution of higher education to meeting the needs of minority and economically disadvantaged students; the availability of financial aid and support mechanisms for such students; and the hiring of faculty and administrators with an understanding of the needs of such students.

(C) Whether funding of the proposed program will result in a net increase in the number of minority and economically disadvantaged students in the academic program at the participating institution of higher education and will not result in a decrease in the amount of financial support available to such students in the academic program or to students at the participating institution as a whole.

(ii) If the applicant is an APO or State, HUD will also consider the extent of the APO's (or State's) commitment to meeting the needs of minority and economically disadvantaged students, including: the APO's (or State's) experience in assisting minority and economically disadvantaged students

to find permanent employment with local governments; its plans for the placement of participating students in work placement assignments among its local governments; and its plans for assisting students who complete CDWSP to find permanent employment.

(iii) The maximum number of ranking points available to institutions of higher education, APOs and States under this paragraph (6) will be equal.

(c) Final Selection

In the final step of the selection process, eligible applications will be considered for selection in their rank order. HUD reserves the right to make awards out of rank order to achieve geographic diversity. In order to provide assistance to as many highly ranked applications as possible, HUD may provide assistance to support a number of students that is less than the number requested under the selected applications.

VIII. Agreements

(a) Grant Agreement

The responsibilities the recipient under CDWSP will be incorporated in a grant agreement executed by HUD and the recipient.

(b) Recipient and Student

The recipient and each participating student must execute a written agreement incorporating their mutual responsibilities under CDWSP. The agreement must be executed before the student can be enrolled in the program. A student's participation in CDWSP will be terminated for failure to meet the responsibilities and standards in the agreement.

(c) Work Placement Assignment Agreement

The institution of higher education, the APO or State (if a APO or State is the grant recipient), the participating student, and the work placement agency must execute a written agreement covering each work placement assignment. The agreement must address the responsibilities of each of the parties, the educational objectives, the nature of supervision, the standards of evaluation, and the student's time commitments under the work placement assignment.

(d) APO (or State) and Institution of Higher Education

Where the recipient is an APO (or a State), the recipient and each participating institution of higher education must execute a written

agreement incorporating their mutual responsibilities under CDWSP.

IX. Administration

(a) Initial Obligation of Funds

When HUD selects an application for funding, and notifies the recipient, it will obligate funds to cover the amount of the approved grant. The initial obligation of funds will be provided for student grants for two years.

(b) Disbursement

Recipients will receive grant payments by U.S. Treasury checks on a reimbursement basis.

(c) Deobligation and Recipient Repayment

(1) HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable time after selection.

(2) If a student's participation in CDWSP is terminated at any time before the completion of the two-year term of the student's program, the recipient will be required to repay to the Federal Government the amount of the tuition support and addition support provided to the student under section III.(b) (2) and (3), above. However, HUD may on a case-by-case basis and for good cause (e.g., serious illness of the student, etc.)

make exceptions to this repayment requirement. Recipients will be required to make this repayment even though the student fails to fulfill his or her repayment obligation to the recipient under section V.(b). The recipient will be eligible to receive payment for the cost of the student stipend paid before the date of the student's termination and for an administrative allowance that is based on the proportion of the two-year term completed by the student. (See section III.(b)(1) and (c). A recipient may substitute a student to complete the two-year term whose participation has been terminated. The substitute student must be otherwise eligible for participation in CDWSP and must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term.

(3) Consistent with OMB Circulars Nos. A-102 and A-110, HUD, in the grant agreement, will set forth in detail other circumstances under which funds may be deobligated, recipients may be liable for repayment, or other sanctions may be imposed.

Other Matters

The information collection requirements contained in this notice have been submitted to the Office of

Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 58, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

Authority: Sec. 107(c) Housing and Community Development Act of 1974 (42 U.S.C. 5307); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

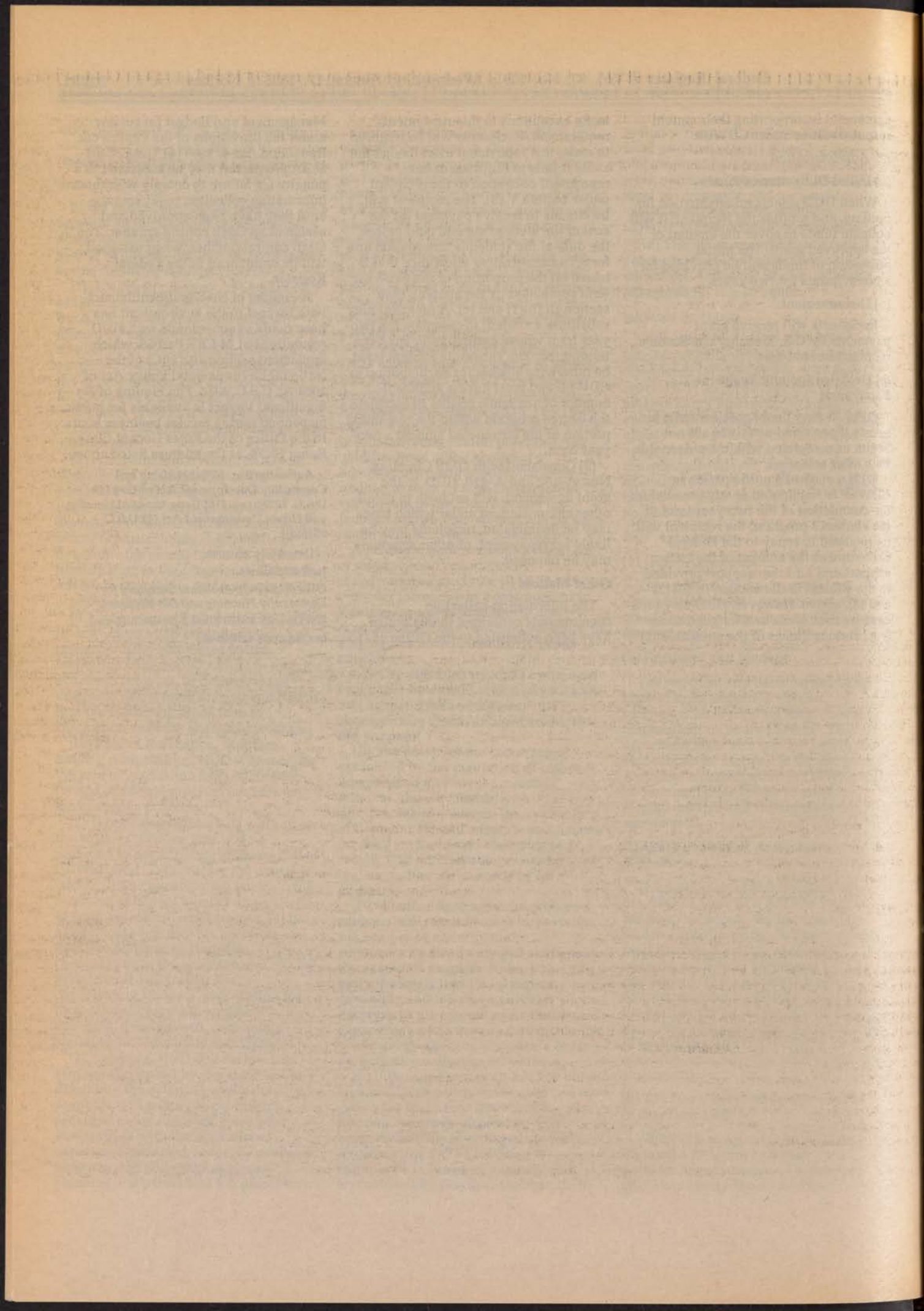
Dated July 25, 1988.

Jack R. Stokvis,

*General Deputy Assistant Secretary for
Community Planning and Development.*

[FR Doc. 88-18496 Filed 8-16-88; 8:45 am]

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August 17, 1988

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for
Community Planning and Development

24 CFR Part 570

Community Development Block Grants;
Relocation, Displacement and Acquisition;
Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Community Planning and Development****24 CFR Part 570**

[Docket No. R-88-1405; FR-2474]

Community Development Block Grants; Relocation, Displacement and Acquisition**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.**ACTION:** Interim rule.

SUMMARY: This interim rule sets forth the displacement, relocation, replacement housing, and real property acquisition policies and requirements governing the Community Development Block Grant Programs (including the Entitlement Grants Program, the State CDBG Program and the HUD-Administered Small Cities Program) and the Urban Development Action Grant Program. The major purpose of this rule is to implement section 509 of the Housing and Community Development Act of 1987, which provides that grants under sections 106 and 119 of the Housing and Community Development Act of 1974 may be made only if the grantee certifies that it is following an anti-resident-displacement and relocation plan.

DATES: *Effective Date:* Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

Comment Due Date: October 17, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Harold J. Huecker, Director, or Melvin Geffner, Deputy Director, Relocation and Real Estate Division, Office of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755-6336 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This interim rule sets forth displacement, relocation, replacement housing and real property acquisition policies and requirements governing Community Development Block Grant (CDBG) Programs (including the Entitlement Grants Program, the State CDBG Program and the HUD-Administered Small Cities Program) and the Urban Development Action Grant Program (UDAG). The Department has consolidated these policies and requirements in 24 CFR 570.606 for the Entitlement Grants Program and the HUD-Administered Small Cities Program. A new § 570.496a has been added to govern the State CDBG Program under Subpart I. Section 570.457, which governs the UDAG program, has been amended to cross-reference the requirements of § 570.606. Except for provisions governing section 104(k) of the Housing and Community Development Act of 1974 (the Act) under the UDAG program, the requirements of these three sections are substantially identical.

I. Uniform Relocation Act

Sections 570.606(a) and 570.496(a) explain the circumstances under which State agency acquisition (and the resulting displacement) for a CDBG- or UDAG- assisted activity will be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601). This interim rule retains the existing URA requirements, but revises the current regulations for clarity.

The Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, enacted April 2, 1987) recently expanded URA coverage. Before the amendment, the relocation provisions of the URA applied only to the displacement of persons (families, individuals, businesses, nonprofit organizations or farms) that results from the acquisition of real property by a Federal agency, a State or a State agency for a Federal or federally assisted project or program. The 1987 amendments added displacement that directly results from rehabilitation, demolition, or privately undertaken acquisition for Federal or federally

assisted programs. This revised coverage will apply to displacement that occurs on or after April 2, 1989.

On December 17, 1987 (52 FR 48015), the Department of Transportation (DOT), as the lead agency, along with sixteen other Federal agencies published an interim final rule implementing those provisions of the 1987 URA amendments that were explicit and which allowed for little, if any, administrative discretion or interpretation. These changes were reflected in 49 CFR Part 24. HUD was unable to participate in the government-wide publication due to Congressional review requirements applicable to HUD rules under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o). HUD subsequently published an interim rule making the December 17, 1988 government-wide interim final rule effective for HUD programs on April 2, 1989 (53 FR 4964, published February 19, 1988).

On July 21, 1988 (53 FR 27598), DOT published a proposed rule implementing the remaining 1987 URA amendments by revising the existing interim rule. The July 21, 1988 rule would apply to DOT, HUD and 16 other Federal agencies. Following the consideration of comments received in response to that proposed rule as well as comments received in response to the interim final rule, a final rule will be promulgated revising 49 CFR Part 24. HUD anticipates that the publication of a final rule in today's proceeding will be published concurrently with the final government-wide URA rule. HUD will incorporate appropriate revisions to the final rule in today's proceeding as necessary, to reflect the government-wide URA rule on or before April 2, 1989. Commenters interested in the URA requirements that will be imposed in this rule should also obtain the government-wide URA proposed rule, and make appropriate comments to DOT.

II. New Subsection 104(d) Requirements

Section 509 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended section 104 of the Housing and Community Development Act of 1974 (the Act) by adding a new subsection (d), and by redesignating existing subsections (d) through (j) as subsections (e) through (k) respectively.

The new section 104(d) of the Act provides that a grant under section 106 (CDBG Programs) or section 119 (UDAG Program) may be made only if the grantee certifies that it is following a "residential antidisplacement and

relocation assistance plan." Grantees under the CDBG Entitlement Program and HUD-Administered Small Cities CDBG Program must make this certification to HUD. Grantees under the UDAG Program must make this certification to HUD in the application for each project. State recipients under the State CDBG Program must certify to the State.

Under section 509(b) of the 1987 Act, the new amendment is effective on October 1, 1988. HUD will apply the new requirements of this section as follows:

Entitlement Grants Program (Metropolitan Cities and Urban Counties)—The interim rule will govern all activities for which funds are first obligated by the grantee on or after the date the first grant from HUD is made after September 30, 1988, without regard to the source year of the funds for the activity.

UDAG and the HUD-administered Small Cities Program—The interim rule will govern grants made by HUD on or after October 1, 1988.

State CDBG Program—The interim rule will govern grant agreements from HUD to the State signed on or after October 1, 1988. Thus, the interim rule will apply to grants that a State makes to state recipients with grant amounts made available to the State by HUD after October 1, 1988.

The residential antidisplacement and relocation assistance plan under section 104(d) contains two components—a one-for-one replacement unit requirement and a relocation assistance component. These components are discussed below.

A. One-for-one Replacement Unit

1. **Replacement requirement.** The interim rule at §§ 570.606(b)(1)(i) and 570.496a(b)(1)(i) implements section 104(d)(2)(A)(i) of the Act. The rule provides that all occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under Part 570 must be replaced with low/moderate-income dwelling units. The replacement dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The interim rule requires that the replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must be:

—Located within the same community. (For the purposes of the interim rule, within the community has

been interpreted to be within the recipient/grantee's jurisdiction.)

—Sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. (The number of occupants that may be housed in units shall be determined by reference to local housing occupancy codes.)

—Provided in standard condition. Replacement units include units that have been raised to standard from substandard condition.

—Designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy of the units.

For the purposes of the section 104(d) requirements, the interim rule defines low/moderate-income dwelling unit as a dwelling unit with a market rental including utility costs, that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation, as established under the Section 8 Existing Housing Program. Based on a nationwide review comparing these FMR's with median incomes of families, the Department determined that, in nearly every jurisdiction, the FMR for a unit housing a four-person household is less than 30% of the gross household income of a family earning 80% of the median income for the jurisdiction. In many areas a family with an income of 60% or 70% of the median income for the jurisdiction can pay the FMR with 30% of its gross income.

The Department recognizes that, generally, a very low-income family—a family earning less than 50% of the median income—cannot afford a unit renting at the FMR level, unless the family is provided supplemental assistance. Therefore, the Department believes that housing vouchers and certificates under the Section 8 Existing Housing Program will remain an essential part of efforts to assist very low-income households. On the other hand, units with project-based subsidies, such as public housing and Section 8 moderate rehabilitation units will also meet the criteria for the one-for-one replacement units under section 104(d) of the Act.

Given the purpose of the new legislation, the Department believes that it is appropriate to require the replacement of substandard units that can be rehabilitated economically. Accordingly, "occupiable dwelling unit" is defined to mean a dwelling unit that is in a standard condition or in a substandard condition, but suitable for rehabilitation.

The conference report on section 509 stated that the conferees did not intend to make vacant and unoccupiable housing subject to the one-for-one replacement requirement, unless the housing was vacated within the CDBG project site after the developer or city began preparations for the project or less than one year before the grant was approved. (H. Rep. No. 426, 100th Cong., 1st Sess. 228 (1987). HUD will consider dwelling units that are vacated within such a time period to be "occupied low/moderate income dwelling units that are demolished or converted to another use as a direct result of activities assisted" under Part 570, and will require the one-for-one replacement of such housing.

Except for grants under the State CDBG program, if the grantee has a HUD-approved Housing Assistance Plan (HAP) the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the HAP will apply. If the grantee has no HUD-approved HAP, the grantee will be required to establish and make public its definition of these terms consistent with the requirements of § 570.306(e)(1). Under the State CDBG program, the State may define, or at its option, allow the state recipient to establish and make public its definition of these terms. If the state recipient establishes definitions, the State must determine if the definitions are acceptable.

2. **Submission and publication requirements.** To ensure that HUD (or the State) and the public are aware of the recipient/grantee's plans for the provision of replacement housing, the interim rule at §§ 570.606(b)(1)(ii) and 570.496a(b)(1)(ii) provides for submission of certain information to HUD or to the State, and requires the recipient/grantee to make this information public before obligating or expending funds for any activity that requires the provision of replacement housing.

3. **Exception.** Under section 104(d)(3) of the Act, the requirements discussed above will not apply if the Secretary finds, on the basis of objective data, that there is available on a nondiscriminatory basis in the area an adequate supply of habitable affordable housing for low- and moderate-income persons. Sections 570.606(b)(1)(iii) and 570.496a(b)(1)(iii) implement this provision. These sections state that the HUD Field Office will make the determination by considering the following factors: housing vacancy rates, the number of vacant low/moderate-income dwelling units, and the number of eligible families on waiting lists for assistance under programs

assisted under the United States Housing Act of 1937. The determination by the HUD Field Office that the one-for-one replacement requirement is inapplicable shall constitute the final agency action on the issue.

The interim rule provides that the "area" to be considered is the recipient/grantee jurisdiction, unless HUD determines, based on geographic and demographic factors, including location and access to places of employment, that the dwelling units located in a larger area should be considered. Such dwelling units will be considered if the Field Office determines that the units would be suitable to serve the needs of the low- and moderate-income households that could be served by the dwelling units that are to be demolished or converted to another use.

The Department welcomes public comment on additional factors for review of requests for exception. The Department would like to refine the rule's thresholds for making these determinations to assure that they are consistent with available data resources and provide communities with clear, understandable criteria to be considered when reviewing requests.

Except for grants under Subpart I, the grantee must submit a request for a determination to the HUD Field Office. State recipients under Subpart I must submit their request to the State which will provide a recommendation to the Field Office on the request.

B. Relocation Assistance Under Section 104(d)

The interim rule at §§ 570.606(b)(2) and 570.496a(b)(2) implements section 104(d)(2)(iii) of the Act. The rule provides that each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use, as a direct result of an activity assisted under this Part 570 shall be provided with relocation assistance. Under the statute, relocation assistance includes reimbursement for actual and reasonable moving expenses, security deposits, credit checks, other moving-related expenses, including any interim housing expenses, and certain replacement housing assistance. Displaced persons have the right to elect, as an alternative to the benefits under section 104(d) of the Act, to receive benefits under the URA, if they determine that it is in their best interest to do so.

Where possible, the interim rule makes the relocation assistance under section 104(d) of the Act identical to the relocation benefits provided under the URA. Accordingly, displaced low- or

moderate-income households will receive the relocation assistance provided to displaced persons required under 24 CFR 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses) whether the household elects to receive assistance under the URA or under section 104(d) of the Act. The interim rule modifies the definition of "comparable replacement dwelling" to reflect affordability requirements contained in section 104(d), and makes other minor changes to the requirements of 24 CFR Part 42. As required by the statute, assistance under section 104(d) of the Act requires the provision of a different type of replacement housing assistance (see discussion below) and additional assistance in the form of payments of security deposits to rent a replacement dwelling and credit checks required to rent or purchase a replacement dwelling. Each displaced household is given an opportunity to elect to receive benefits prescribed under the URA or 1987 Act provisions.

Replacement housing assistance is described in section 104(d)(2)(A)(iii) of the Act. Under this section, displaced persons of low- and moderate-income must be provided with compensation sufficient to assure that, for a five-year period after relocation, the displaced family will not bear a ratio of shelter costs to income that exceeds 30 percent of income.

While section 509 provides that shelter costs shall not exceed 30 percent of income, the Conference report on this section requires that the recipient/grantee provide compensation to ensure that displaced low- and moderate-income households do not pay more than 30 percent of their *adjusted income* for rent (H. Rep. No. 426, 100th Cong., 1st Sess. 227 (1987)). While the Department recognizes that section 509, as enacted, is significantly different from the provision addressed in the Conference report, it does not appear that subsequent revisions were intended to impose an income standard different from adjusted income. In determining how to adjust gross income, HUD considered the use of the income computation standard used under the United States Housing Act of 1937 (see 24 CFR Parts 813 and 913), but determined that this approach would be inappropriate for programs under Part 570 since recipient/grantees are generally unfamiliar with the complicated requirements of these standards. Instead, HUD has decided to permit the grantee to make such adjustments to gross incomes as the grantee may deem appropriate. (In the case of state recipients the State, or if

the State permits, the state recipient will make adjustments as it may deem appropriate.) Such an approach is similar to an approach used in the past under the Uniform Relocation Act.

Under the interim rule the recipient/grantee may provide this compensation either through the provision of a Section 8 housing voucher or certificate (through the local Public Housing Agency) or as cash rental assistance.

The Department encourages recipient/grantees to offer Section 8 housing vouchers or certificates to all displaced low- and moderate-income households, thereby increasing the likelihood that the household will be able to afford standard housing after the five-year period expires. Where the recipient/grantee provides assistance in the form of a Section 8 housing voucher or certificate, however, the household must be provided with referrals to comparable replacement dwelling units whose owners are willing to participate in the certificate or housing voucher programs. To ensure that a household will not bear a ratio of shelter costs to income that exceeds 30 percent, where a certificate or housing voucher is provided to a household, the comparable dwelling unit must be made available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively. Housing voucher recipients, of course, may reject the dwelling unit to which they are referred and use their voucher to rent another dwelling unit with a monthly cost in excess of the payment standard if they are willing to pay the difference between the rent to the owner and the housing assistance payment under the housing voucher.

If housing vouchers or certificates are not provided, the recipient/grantee must provide cash rental assistance in the form of payments equal to 60 months (*i.e.*, 5 years) times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with adjustments as described above) from the lesser of: (1) The monthly cost of rent and utilities at a comparable replacement dwelling unit, or (2) the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates. Cash assistance may be in a lump sum or in installments.

In lieu of the housing voucher, certificate or cash assistance described above, the statute permits the household to elect to receive a lump sum payment to permit the household to secure participation in a housing cooperative or

mutual housing association. The interim rule provides for the election of a lump sum payment in an amount equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with adjustments as described above) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments will be discounted at a rate that is equal to a rate of interest paid on passbook savings deposits by a federally insured bank or savings and loan institution conducting business in the recipient/grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the recipient/grantee is encouraged, subject to appropriate safeguards to issue a payment in advance of the purchase of the interest in the cooperative or mutual housing association.

Under the interim rule, a low- or moderate-income household is eligible for relocation assistance under section 104(d) of the Act if:

(1) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the recipient/grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(2) The household is required to move from the dwelling unit on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants Program); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD-administered Small Cities Program); the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG Program); or the date of the initial submission of an application to a State from a unit of general local government that is approved for the requested activity (State CDBG program). (This applies to dwelling units owned by a Federal or State agency, as defined under the URA.)

If the displacement occurs after this date, the household will not be eligible for assistance if the household is evicted for cause, if the household moved to the property after the date after receiving written notice of the expected displacement; or the grantee determines and HUD concurs that the displacement was not a result of the assisted activity. (Under the State CDBG program, the

state recipient makes this determination with the State's concurrence.) If a displacement occurs before this date, the household may be eligible for assistance if the grantee or HUD determines that the displacement was a direct result of an activity assisted under Part 570. (Under the State CDBG program, either the state recipient, the State or HUD may make this determination.)

C. Steps To Minimize Displacement

Minimizing displacement has long been an integral part of the policies and requirements which govern HUD-assisted programs. Consistent with existing policies and the special emphasis on protecting low- and moderate-income persons, the Department has included at § 570.606(b), a requirement that grantees identify the steps they will take to minimize the displacement of persons from their homes and neighborhoods.

The Department believes that strong relocation assistance standards that require grantees to provide substantial levels of assistance to persons displaced by HUD-assisted programs constitute the most effective antidisplacement policy. In addition to providing meaningful help to those persons most directly affected by displacement-causing projects, the substantial costs paid by the displacing entity act as the strongest deterrent to unnecessary displacement. For these reasons, the Department has, wherever possible, included in HUD program regulations very specific relocation assistance requirements governing displacement, not subject to the URA.

The pending expansion of the URA coupled with the new relocation assistance requirements in § 570.606(b) represent the strongest antidisplacement measures to be applied to a HUD-assisted program. In determining whether grantees have met CDBG anti-displacement goals and objectives, HUD will rely primarily on the monitoring of actual displacement, including a careful examination of randomly selected relocation cases and a review of the assistance provided to persons displaced. Additionally on a random basis, the Department will interview displaced persons and inspect replacement housing. Special attention will be given to the displacement of low- and moderate-income households from their dwellings.

III. Section 104(k) Requirements

Section 104(k) of the Act states that each grantee "shall provide for reasonable benefits to any person involuntarily and permanently

displaced" as a result of the use of CDBG/UDAG assistance to acquire or substantially rehabilitate property. This requirement, formerly section 104(j), was added by the Housing and Urban-Rural Recovery Act of 1983.

HUD has not, as yet, fully implemented section 104(k) for all programs covered under Part 570. Minimum section 104(k) standards for the UDAG program were added at § 570.457(c) on February 7, 1987 (52 FR 3614) and were effective on March 17, 1987. Revisions to § 570.606 implementing section 104(k) of the Act were proposed on October 31, 1984 (49 FR 43852), but a final rule in that proceeding has not as yet been issued. In the absence of regulations, technical advice concerning compliance with this provision was contained in HUD Notice CPD 88-7 (issued February 29, 1988).

The requirements of section 104(k) of the Act will effectively be superseded by April 2, 1989 by the 1987 URA amendments discussed above. All persons displaced on or after that date by acquisition, rehabilitation or demolition for a federally assisted activity will be entitled to relocation assistance under the URA. In light of the impact of section 104(k) of the Act after April 2, 1989, the Department has elected not to revise the regulations to provide detailed guidelines for providing rental assistance to persons covered by section 104(k) of the Act. The interim rule at §§ 570.606(c) and 570.496a(c) merely requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, non-profit organizations, and farms) displaced (*i.e.*, permanently and involuntarily moved) as a result of the use of assistance received under Part 570 to acquire or substantially rehabilitate property, where such displacement is not subject to the URA or section 104(d) of the Act. As described under HUD Notice CPD 88-7, recipient/grantees have discretion to develop their own policies, subject to a minimum standard that all displaced persons be provided appropriate advisory service, reimbursed for their actual reasonable moving expenses, and provided with financial assistance sufficient to enable a person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income. (The Department encourages recipient/grantees to work with the local Public Housing Agency to provide section 8 housing vouchers or certificates along with referrals to

suitable housing where the owner agrees to participate in the Section 8 Program.)

Rather than revise the existing section 104(k) requirements applicable to the UDAG program for the limited time period remaining before April 2, 1989, UDAG grantees will continue to be subject to the section 104(k) requirements as prescribed in the February 7, 1987 rule (see § 570.457(b)). HUD believes that this approach will avoid confusion for UDAG grantees during this interim period. (Provisions governing residential displacement have been revised slightly. See the discussion at Section VII, below.)

IV. Optional Relocation Assistance

Under section 105(a)(11) of the Act, a grantee may provide relocation payments and other relocation assistance for displaced individuals, families, businesses, organizations, and farm operations. Existing § 570.606(b) implements these requirements. These requirements are retained in the interim rule, with minor amendments.

The interim rule at §§ 570.606(d) and 570.496a(d) provides that optional relocation assistance may be provided if displacement is caused by an activity that is not subject to the URA, or to section 104 (d) or (k) of the Act. The recipient/grantee may also provide relocation assistance to persons covered by those laws beyond that required. Unless such assistance is provided pursuant to State or local law, the recipient/grantee is required to provide assistance only upon the basis of a written determination that the assistance is appropriate and must adopt a written policy available to the public that describes the relocation assistance that the recipient/grantee has elected to provide and that provides for equal assistance within each class of displacees.

V. Appeals

Existing § 570.606(b)(3) currently permits the owner or occupant of a property to appeal a grantee's determination that the URA does not apply to an acquisition or resulting displacement under 24 CFR part 42, Subpart J. The appeals provisions under §§ 570.606(e) and 570.496a(e) permit the appeal of determinations concerning the person's eligibility for, or the amount of, a relocation payment provided under any of the authorities described above. The interim rule requires the person to file a written appeal with the recipient/grantee, and prescribes the appeal procedures described in 24 CFR 42.10.

To comply with subsection 104(d)(2)(C) of the Act, the interim rule at § 570.606(e) and 570.496a(e) also

permits a low- or moderate-income household that has been displaced from a dwelling to seek a review of the recipient/grantee's determination on his or her appeal. The review under the UDAG Program, CDBG Entitlement Program, and HUD-administered Small Cities CDBG Program is made by the HUD Field Office serving the locality. The review under the State CDBG Program is made by the State recipient.

VI. Responsibility of Grantee

Section 570.606(f) provides that the grantee is responsible for ensuring compliance with the relocation, displacement and acquisition requirements. (Under the State CDBG program, the State as grantee is responsible for ensuring compliance with these requirements by the state recipient. See § 570.496a(f).) This section also states that the cost of assistance required under the relocation, displacement and acquisition provisions may be paid from local public funds, funds provided under Part 570, or funds available from other sources, and requires the maintenance of records in sufficient detail to demonstrate compliance with the provisions of the section.

VIII. Displacement

Paragraphs (g) of §§ 570.606 and 570.496a provide that a displaced person is a person that is required to move permanently and involuntarily and includes residential tenants who move from the real property if:

—The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly cost for rent and utilities that does not exceed the greater of 30 percent of the tenant household's average monthly gross income or the tenant's costs for rent and utilities before:

(1) The date that the owner submits a request to the recipient/grantee for financial assistance that is subsequently approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA.); or

(2) The date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants Program); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD-administered Small Cities Program); the submission of an application to HUD by

a city or urban county under § 570.458 that is granted for the requested activity (UDAG Program); or the initial submission of an application to the State from a unit of general local government requesting assistance that is later granted (States CDBG program). (This applies to dwelling units owned by a Federal or State agency, as defined under the URA.)

—The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket moving costs incurred in connection with the move; or

—The tenant is required to relocate temporarily and is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs or other conditions of the temporary relocation are not reasonable.

Section 570.606(g) adopts the provisions currently contained in § 570.457(c), with minor miscellaneous clarifications to reflect existing HUD policies. One change to the cited UDAG provision involves the limitation on the amount of rent and utilities that may be charged a tenant upon the completion of the assisted activity. Under § 570.457(c) the limitation is based, in part, on the tenant's costs for rent and utilities on the date of preliminary funding approval for the UDAG assistance. Under the interim rule, the limitation is based upon the date of submission of a request for financial assistance, or in some cases, on the date of the application requesting assistance. HUD believes that this change is necessary to ensure a consistent relocation and displacement policy among the various programs under Title I of the Act. The modification should not have a significant impact on residential tenants required to move as a result of UDAG activities.

VIII. Loan Guarantee Provisions

In addition to the revisions discussed above, the interim rule incorporates existing policies regarding the applicability of the relocation, displacement, and acquisition requirements to activities that are financed with loan guarantees under section 108 of the Act. The interim rule revises § 570.702 to provide that the applicant for loan guarantee (or the designated public agency) must comply with requirements identical to the above-described relocation, displacement and acquisition requirements in connection with

activities that are financed in whole or in part with the loan guarantee.

Interim rule

Section 509(b) of the 1987 Act requires that the provisions of section 104(d) of the Act be effective on October 1, 1988. Department believes that the statutory duty to implement this section by that date, to explain the relationship between the various authorities governing relocation and displacement under the CDBG and UDAG programs, and to ensure that the benefits provided under section 104(d) are made available to effected members of the public as soon as possible, makes this prior notice and comment impracticable and contrary to the public interest. For these reasons, the Department does not believe that it is appropriate to subject this rule to notice and comment rulemaking before making it effective. Public comments, however, are invited for 60 days following publication of the interim rule. These comments will be considered in the adoption of a final rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does

not affect the amount of funds provided under the CDBG or UDAG programs, but rather modifies and updates program requirements to comport with recently enacted legislation.

This rule was listed as Item No. 998 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.218, 14.219, 14.221, 14.225 and 14.227.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the Federal Register.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department amends 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 is revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 570.201, paragraph (i) is revised to read as follows:

§ 570.201 Basic eligible activities.

(i) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations, and farm operations where the assistance is:

- (1) Required under the provisions of § 570.606 (a), (b) or (c); or
- (2) Determined by the recipient to be appropriate under the provisions of § 570.606(d).

3. In § 570.303, paragraph (h) is redesignated as paragraph (i), and a

new paragraph (h) is added to read as follows:

§ 570.303 Certifications.

(h) It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act) (including a certification that the grantee is following such a plan); the relocation requirements of § 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

§ 570.403 [Amended]

4. The reference to "24 CFR 570.602 (a), (b), and (c)" in § 570.403(i)(2)(i) is revised to read "24 CFR 570.606(a)".

5. Section 570.457 is revised to read as follows:

§ 570.457 Relocation, displacement and acquisition.

(a) *General.* The following relocation, displacement and acquisition provisions under 24 CFR 570.606 apply to applicants under this Subpart G:

(1) The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601), as described in 24 CFR 570.606(a);

(2) The residential antidisplacement and relocation assistance plan requirements of section 104(d) of the Act, as described in 24 CFR 570.606(b);

(3) The relocation requirements of section 104(k) of the Act, as described in § 570.606(c) and modified in paragraph (b) of this section below;

(4) The optional relocation assistance requirements of section 105(a)(11) of the Act, as described in 24 CFR 570.606(d); and

(5) The appeals procedures, grantee responsibilities and displacement provisions described in 24 CFR 570.606 (e), (f) and (g).

(b) *Section 104(k) relocation requirements.* In addition to the requirements of 24 CFR 570.606(c), the written statement of relocation assistance standards under section 104(k) must include the following minimum requirements.

(1) Eligibility criteria for relocation assistance must cover:

(i) Any tenant legally occupying the property at the time the grantee enters into a contract to provide assistance for the acquisition or rehabilitation; and

(ii) Any tenant who legally moves into the property between such event and the actual acquisition or rehabilitation without receiving prior written notice of his or her possible displacement as a result of the planned acquisition or rehabilitation.

(2) Any residential or nonresidential tenant which is determined under grantee standards to be displaced as a direct result of rehabilitation or acquisition assisted under this part (not subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 or section 104(d) of the Act) must be provided with relocation assistance, including at a minimum:

(i) Reasonable moving expenses

(ii) Advisory services needed to help in relocating; and

(iii) For a displaced residential tenant:

(A) Referral to at least one suitable, decent, safe and sanitary replacement dwelling unit. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(B) Either (1) payment at least equal to 24 times the increase, if any, between the monthly cost of rent and utilities at the dwelling unit from which the tenant is displaced and the cost of rent and utilities at a suitable decent, safe and sanitary replacement dwelling unit; or

(2) The provision through the local Public Housing Agency of a certificate or housing voucher for rental assistance payments under the Section 8 Housing Assistance Payments Program, if the tenant is an eligible lower income person and such assistance is available.

6. In § 570.458, paragraph (c)(14)(ix)(I) is amended to read as follows:

§ 570.458 Full applications.

(c) * * *
(14) * * *
(ix) * * *

(I) The acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.457(a)(1) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.457(a)(2)

governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act) (including a certification that the applicant is following such a plan); the relocation requirements of § 570.457(a)(3) and (b) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.457(a)(4) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

7. Part 570, subpart I is amended by adding a new § 570.496a to read as follows:

§ 570.496a Relocation, displacement and acquisition.

(a) *Uniform Relocation Act.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property by a State agency for an activity assisted under this subpart and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The State's certification of compliance with the URA is required in the grant agreement.

(2) An acquisition and resulting displacement by a State agency is "for an assisted activity" if it occurs on or after the date of the initial submission of an application to the State by a unit of general local government requesting assistance under this subpart that is granted for the requested activity. However, an acquisition or displacement that occurs on or after the described date is not subject to the URA if the State determines that the acquisition or displacement was not carried out for an assisted activity, and the HUD Field Office concurs in that determination. An acquisition or displacement that occurs before the described date is subject to the URA, if the state recipient, the State or the HUD Field Office determines that the acquisition or displacement was carried out for the assisted activity. The State may, at any time, request a HUD determination whether an acquisition or displacement will be considered to be for an assisted activity and thus subject to these regulations. To be eligible for relocation assistance, however, a person must also meet the eligibility criteria in 24 CFR Part 42.

(b) *Residential antidisplacement and relocation assistance plan.* Under section 104(d) of the Act, the State must ensure that each state recipient adopts,

makes public and certifies to the State that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (b)(1) of this section), and relocation assistance (paragraph (b)(2) of this section). Additionally under section 106(d)(5)(A) of the Act, the state recipient must also certify to the State that it will minimize displacement of persons as a result of assisted activities.

(1) *One-for-one replacement units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under this subpart must be replaced by governmental agencies or private developers with low/moderate-income dwelling units. Replacement low/moderate-income dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must meet the following requirements:

(A) The units must be located within the state recipient's jurisdiction.

(B) The units must be sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. The number of occupants that may be housed in units shall be determined in accordance with local housing occupancy codes.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition.

(D) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy.

(ii) Before obligating or expending funds provided under this subpart for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the state recipient must advise the State that it is undertaking the activity. The state recipient must make public, and submit to the State, if requested, the following information in writing:

(A) A description of the proposed assisted activity;

(B) The general location on a map and approximate number of dwelling units

by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

(iii) (A) The requirements of this paragraph (b)(1) do not apply if the HUD Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the state recipient's jurisdiction. In making this determination, the HUD Field Office will consider the housing vacancy rate for the jurisdiction, the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted) and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction.

(B) The HUD Field Office may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the state recipient's jurisdiction. Such additional dwelling units shall be considered if the HUD Field Office determines that the units would be suitable to serve the needs of the low- and moderate income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. The HUD Field Office must base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(C) A state recipient must submit its request for a determination under this paragraph (b)(1)(iii) to the State. If the State agrees with the request, the State must provide a recommendation to the HUD Field Office on the request.

(2) *Relocation assistance.* (i) Each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use, as a direct

result of an activity assisted under this subpart shall be provided with relocation assistance. The low- or moderate-income household may elect to receive relocation assistance described at 24 CFR Part 42 (HUD's regulations implementing the URA), or may elect to receive the following relocation assistance:

(A) The relocation assistance described at 24 CFR Part 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses). Relocation notices must be issued consistent with, and in the manner prescribed under, 24 CFR 42.203. The definition of "comparable replacement dwelling" used in 24 CFR Part 42 is modified as described in paragraph (b)(3)(i) of this section. Displaced households provided with replacement housing assistance under paragraph (b)(2)(i)(C), in the form of a certificate or housing voucher under Section 8 of the United States Housing Act of 1937, must be provided referrals to comparable replacement dwelling units whose owners are willing to participate in the housing voucher or certificate program. The state recipient shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;

(B) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and credit checks required to rent or purchase the replacement dwelling unit; and

(C) Replacement housing assistance. Households are eligible to receive one of the following forms of replacement housing assistance:

(1) Each household must be offered compensation designed to ensure that, for a five-year period, the displaced household will not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent. Such compensation shall be either:

(i) A certificate or housing voucher for rental assistance provided through the local Public Housing Agency under Section 8 of the United States Housing Act of 1937; or

(ii) Cash rental assistance equal to 60 times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the State or, if the State permits, the state recipient may deem appropriate) from the lesser of: the

monthly cost of rent and utilities at a comparable replacement dwelling unit or the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates.

The State, at its option, may require the state recipient to provide the cash payment in either a lump sum or in installments. The state recipient may at its discretion offer the household a choice between the certificate/housing voucher or cash rental assistance.

(2) If the household purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the household may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the State or, if the State permits, the state recipient may deem appropriate) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally-insured bank or savings and loan institution conducting business within the state recipient's jurisdiction. To the extent necessary to minimize hardship to the household, the state recipient shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(ii) *Eligibility for relocation assistance.* (A) A low- or moderate-income household that is required to move as a direct result of demolition or conversion of a low/moderate income dwelling unit to another use, is eligible for relocation assistance under this paragraph (b)(2) if:

(1) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the state recipient for financial assistance that is later approved and funded for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(2) The household is required to move from the dwelling unit on or after the date of the initial submission of an application to the State by the unit of general local government requesting assistance under this subpart that is later approved for the requested activity. (This applies to dwelling units

owned by a Federal or State agency as defined under the URA.)

(B) If the displacement occurs on or after the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is not eligible for relocation assistance if:

(1) The household is evicted for cause;

(2) The household moved into the property on or after the date described in paragraph (b)(2)(ii)(A) of this section, after receiving written notice of the expected displacement; or

(3) The state recipient determines that the displacement was not a direct result of the assisted activity, and the State concurs in that determination.

(c) If the displacement occurs before the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is eligible for relocation assistance if the state recipient, the State, or HUD determines that the displacement was a direct result of an activity assisted under this subpart.

(3) *Definitions.* For the purposes of this paragraph (b):

(i) "Comparable replacement dwelling unit" means a dwelling unit that:

(A) Meets the criteria of 24 CFR 42.2(c)(1) through (4); and

(B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed 30 percent of the household's average gross monthly income (with such adjustments to income as the State or, if the State permits, the state recipient may deem appropriate), after taking into account any rental assistance the household would receive.

Where a certificate or housing voucher is provided to a household under paragraph (b)(2)(i)(C)(1)(i) of this section, the dwelling unit must be available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively.

(ii) "Decent, safe and sanitary dwelling" means a decent, safe and sanitary dwelling as defined in 24 CFR 42.2(e).

(iii) "Low/moderate income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.

(iv) "Occupiable dwelling unit" means a dwelling unit that is in a standard condition, or is in a substandard condition, but is suitable for rehabilitation.

(v) "Standard condition" and "substandard condition suitable for rehabilitation." The State may define these terms, or may allow the state recipient to establish and make public its definition of these terms. If the state recipient establishes its definition of these terms, the State must determine if the state recipient's definition is acceptable.

(4) *Effective date.* The provisions of this paragraph (b) are applicable to grant agreements from HUD to the State signed on or after October 1, 1988.

(c) *Section 104(k) relocation requirements.* Section 104(k) of the Act requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, nonprofit organizations, or farms) displaced (*i.e.*, moved permanently and involuntarily) as a result of the use of assistance received under this subpart to acquire or substantially rehabilitate property. If such displacement is subject to paragraph (a) or (b) of this section, above, this paragraph does not apply. The state recipient must develop, adopt and provide to persons to be displaced a written notice of the relocation assistance for which they are eligible. Persons entitled to assistance under this paragraph must be provided relocation assistance, including at a minimum:

(1) Reasonable moving expenses;

(2) Advisory services needed to help in relocating. The state recipient shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(3) Financial assistance sufficient to enable any person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the State may permit state recipients to provide relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations and farms displaced by an activity not subject to paragraph (a), (b) or (c) of this section above. The State may also permit the state recipient to provide relocation assistance to persons covered under paragraph (a), (b) or (c) of this section beyond that required. Unless such assistance is provided pursuant to State or local law, the state

recipient must provide the assistance only upon the basis of a written determination that the assistance is appropriate and must adopt a written policy available to the public that describes the relocation assistance that the state recipient has elected to provide and that provides for equal relocation assistance within each class of displacees.

(e) *Appeals.* If a person disagrees with the state recipient's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the state recipient. The appeal procedures to be followed are described in 24 CFR 42.10. A low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the state recipient decision to the State.

(f) *Responsibility of grantee.* (1) The State as grantee is responsible for ensuring compliance with the requirements of this section by its state recipients.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part or funds available from other sources.

(3) The State and the state recipient must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(g) *Displacement.* For the purposes of this section, a "displaced person" is a person that is required to move permanently and involuntarily and includes a residential tenant who moves from the real property if:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly rent and estimated average cost for utilities that does not exceed the greater of:

(i) 30 percent of the tenant household's average monthly gross income; or

(ii) The tenant's monthly rent and average cost for utilities before:

(A) The date that the owner submits a request to the state recipient for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA); or

(B) The date of initial submission of an application to the State by a unit of general local government requesting assistance under this subpart that is

later approved for the requested activity. (This applies to dwelling units owned by a Federal or State agency as defined under the URA); or

(2) The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket costs incurred in connection with the move; or

(3) The tenant is required to relocate temporarily and:

(i) Is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs; or

(ii) Other conditions of the temporary relocation are not reasonable.

8. Section 570.606 is revised to read as follows:

§ 570.606 Relocation, displacement and acquisition.

(a) *Uniform Relocation Act.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property by a State agency for an activity assisted under this part and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The grantee's certification of compliance with the URA is required in the grant agreement.

(2) An acquisition and resulting displacement by a State agency is "for an assisted activity" if it occurs on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). However, an acquisition or displacement that occurs on or after the described date is not subject to the URA if the grantee determines that the acquisition or displacement was not carried out for an assisted activity, and the HUD Field Office concurs in that determination. An acquisition or displacement that occurs before the described date is subject to the URA, if the grantee or the HUD Field Office determines that the acquisition or displacement was carried out for the assisted activity. The grantee may, at any time, request a HUD determination whether an acquisition or displacement will be considered to be for an assisted

activity and thus subject to these regulations. To be eligible for relocation assistance, however, a person must also meet the eligibility criteria in 24 CFR Part 42.

(b) *Residential antidisplacement and relocation assistance plan.* Under section 104(d) of the Act, each grantee must adopt, make public and certify that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (b)(1) of this section), and relocation assistance (paragraph (b)(2) of this section). The plan must also indicate the step that will be taken consistent with other goals and objectives of this part to minimize the displacement of persons from their homes as a result of any activities assisted under this part.

(1) *One-for-one replacement units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under this part must be replaced by governmental agencies or private developers with low/moderate-income dwelling units. Replacement low/moderate-income dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must meet the following requirements:

(A) The units must be located within the grantee's jurisdiction.

(B) The units must be sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. The number of occupants that may be housed in units shall be determined in accordance with local housing occupancy codes.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition.

(D) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy.

(ii) Before obligating or expending funds provided under this part for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the grantee must make

public, and submit the following information in writing to HUD:

(A) A description of the proposed assisted activity;

(B) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

(iii)(A) The requirements of this paragraph (b)(1) do not apply if the HUD Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the grantee's jurisdiction. In making this determination, the HUD Field Office will consider the housing vacancy rate for the jurisdiction, the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted) and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction.

(B) The HUD Field Office may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if the HUD Field Office determines that the units would be suitable to serve the needs of the low- and moderate-income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. The HUD Field Office must base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(C) The grantee must submit a request for a determination under this paragraph (b)(1)(iii) directly to the HUD Field Office.

(2) *Relocation assistance.* (1) Each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use as a direct result of an activity assisted under this part shall be provided with relocation assistance. The low- or moderate-income household may elect to receive relocation assistance described at 24 CFR Part 42 (HUD's regulations implementing the URA), or may elect to receive the following relocation assistance:

(A) The relocation assistance described at 24 CFR Part 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses). Relocation notices must be issued consistent with, and in the manner prescribed under, 24 CFR 42.203. The definition of "comparable replacement dwelling" used in 24 CFR Part 42 is modified as described in paragraph (B)(3)(i) of this section. Displaced households provided with replacement housing assistance under paragraph (b)(2)(i)(C) of this section, in the form of a certificate or housing voucher under Section 8 of the United States Housing Act of 1937, must be provided referrals to comparable replacement dwelling units whose owners are willing to participate in the housing voucher or certificate program. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;

(B) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and credit checks required to rent or purchase the replacement dwelling unit; and

(C) Replacement housing assistance. Households are eligible to receive one of the following forms of replacement housing assistance:

(i) Each household must be offered compensation designed to ensure that, for a five-year period, the displaced household will not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent. Such compensation shall be either:

(i) A certificate or housing voucher for rental assistance provided through the local Public Housing Agency under Section 8 of the United States Housing Act of 1937; or

(ii) Cash rental assistance equal to 60 times the amount that is obtained by

subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the lesser of: The monthly cost of rent and utilities at a comparable replacement dwelling unit or the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates.

The grantee may provide the cash payment in either a lump sum or in installments. The grantee may at its discretion offer the household a choice between the certificate/housing voucher or cash rental assistance.

(2) If the household purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the household may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally-insured bank or savings and loan institution conducting business within the grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the grantee shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(ii) Eligibility for relocation assistance. (A) A low- or moderate-income household that is required to move as a direct result of demolition or conversion of a low/moderate income dwelling unit to another use, is eligible for relocation assistance under this paragraph (b)(2) if:

(1) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(2) The household is required to move from the dwelling unit on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by

a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA.)

(B) If the displacement occurs on or after the appropriate date described in paragraph (b)(2)(i)(A) of this section, the low- or moderate-income household is not eligible for relocation assistance if:

(1) The household is evicted for cause;

(2) The household moved into the property on or after the date described in paragraph (b)(2)(i)(A) of this section, after receiving written notice of the expected displacement; or

(3) The grantee determines that the displacement was not a direct result of the assisted activity, and the HUD office concurs in that determination.

(C) If the displacement occurs before the appropriate date described in paragraph (b)(2)(i)(A) of this section, the low- or moderate-income household is eligible for relocation assistance if the grantee or HUD determines that the displacement was a direct result of an activity assisted under this part.

(3) *Definitions.* For the purposes of this paragraph (b):

(i) "Comparable replacement dwelling unit" means a dwelling unit that:

(A) Meets the criteria of 24 CFR 42.2(c)(1) through (4); and

(B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed 30 percent of the household's average gross monthly income (with such adjustments to income as the grantee may deem appropriate) after taking into account any rental assistance the household would receive.

Where a certificate or housing voucher is provided to a household under paragraph (b)(2)(i)(C)(1)(i), the dwelling unit must be available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively.

(ii) "Decent, safe and sanitary dwelling" means a decent, safe and sanitary dwelling as defined in 24 CFR 42.2(e).

(iii) "Low/moderate income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing

and moderate rehabilitation established under 24 CFR Part 888.

(iv) "Occupiable dwelling unit" means a dwelling unit that is in a standard condition, or is in a substandard condition, but is suitable for rehabilitation.

(v) "Standard condition" and "substandard condition suitable for rehabilitation". If the grantee has a HUD-approved Housing Assistance Plan, the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the plan will apply. If the grantee does not have a HUD-approved Housing Assistance Plan, the grantee must establish and make public its definition of these terms consistent with the requirements of § 570.306(e)(1).

(4) *Effective date.* For all grants except those made under Subpart D of this part (Entitlement Grants), the provisions of this paragraph (b) are applicable to grants made on or after October 1, 1988. For grants made under Subpart D, these provisions will govern all activities for which funds are first obligated by the grantee on or after the date the first grant is made after September 30, 1988, without regard to the source year of the funds used for the activity.

(c) *Section 104(k) relocation requirements.* Section 104(k) of the Act requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, nonprofit organizations, or farms) displaced (i.e., moved permanently and involuntarily) as a result of the use of assistance received under this part to acquire or substantially rehabilitate property. If such displacement is subject to paragraph (a) or (b) of this section, above, this paragraph does not apply. The grantee must develop, adopt and provide to persons to be displaced a written notice of the relocation assistance for which they are eligible. The minimum requirements for such assistance under the UDAG Program are described at § 570.457(b). Under CDBG programs, persons entitled to assistance under this paragraph must be provided relocation assistance, including at a minimum:

- (1) Reasonable moving expenses;
- (2) Advisory services needed to help in relocating. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(3) Financial assistance sufficient to enable any person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations and farms displaced by an activity not subject to paragraph (a), (b) or (c) of this section above. The grantee may also provide relocation assistance to persons covered under paragraph (a), (b) or (c) of this section beyond that required. Unless such assistance is provided pursuant to State or local law, the grantee must provide the assistance only upon the basis of a written determination that the assistance is appropriate (see 24 CFR 570.201(i)) and must adopt a written policy available to the public that describes the relocation assistance that the grantee has elected to provide and that provides for equal relocation assistance within each class of displacees.

(e) *Appeals.* If a person disagrees with the grantee's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the grantee. The appeal procedures to be followed are described in 24 CFR 42.10. A low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee decision, to the HUD Field Office.

(f) *Responsibility of grantee.* (1) The grantee is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this part.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(g) *Displacement.* For the purposes of this section, a "displaced person" is a person that is required to move permanently and involuntarily and includes a residential tenant who moves from the real property if:

- (1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and

sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly rent and estimated average cost for utilities that does not exceed the greater of:

(i) 30 percent of the tenant household's average monthly gross income; or

(ii) The tenant's monthly rent and average cost for utilities before:

(A) The date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA); or

(B) The date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA); or

(2) The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket costs incurred in connection with the move; or

(3) The tenant is required to relocate temporarily and:

- (i) Is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs; or
- (ii) Other conditions of the temporary relocation are not reasonable.

9. Section 570.702 is amended by adding a new paragraph (f) to read as follows:

§ 570.702 Application requirements.

(f) The applicant (or the designated public agency) shall comply with relocation, displacement and acquisition requirements in connection with activities financed in whole or in part with a loan guarantee under this subpart that are identical to the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as described at § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.606(b) governing the residential antidisplacement and relocation

assistance plan under section 104(d) of the Act; the relocation requirements of § 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

10. Section 570.900 is amended by revising paragraph (a) to read as follows:

§ 570.900 Performance standards.

* * * * *

(a) *Relocation.* With respect to displacement, the grantee has complied with the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act)(including a certification that the

applicant is following such a plan), the relocation requirements of § 570.606(c) governing displacement to section 104(k) of the Act, and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

Dated: July 26, 1988.

Jack R. Stokvis,

*General Deputy Assistant Secretary for
Community Planning and Development.*

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Environmental Protection Agency

Wednesday
August 17, 1988

Part V

Environmental Protection Agency

40 CFR Part 700

**Fees for Processing Premanufacture
Notices, Exemption Applications and
Notices, and Significant New Use
Notices; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 700

[OPTS-260002A; FRL-3353-8]

Fees For Processing Premanufacture Notices, Exemption Applications And Notices, And Significant New Use Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a rule under section 26(b) of the Toxic Substances Control Act (TSCA). The rule requires manufacturers, importers, and processors to pay fees for premanufacture notices (PMNs), certain PMN exemption applications and notices, and significant new use notices submitted under TSCA section 5 (a) and (h) (section 5 notices). EPA is not requiring submitters to pay fees for low volume exemption notices under 40 CFR 723.50 and test market exemption applications under 40 CFR 720.38. EPA is requiring submitters to pay a fee of \$1,000 for PMNs for intermediate chemical substances when such PMNs are submitted simultaneously with a PMN for the "final product" related to the intermediate chemical substance. Submitters of all other section 5 notices, including the "final product" PMN, are required to pay a fee of \$2,500. However, EPA is only requiring a fee of \$100 for section 5 notices submitted by small business concerns.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on August 31, 1988. This rule shall become effective on September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202-554-1404), TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This rule establishes fees for processing PMNs, certain exemption applications and notices, and significant new use notices. This rule also establishes certain remittance procedures.

Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and

reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Authority

Section 26(b) of TSCA provides that the Administrator may, by rule, establish fees for persons required to submit data under sections 4 and 5 of TSCA (including premanufacture notices, significant new use notices, and exemption applications and notices) to defray the costs of administering TSCA. EPA must take into account a submitter's ability to pay the fee and the Agency's cost of reviewing the submitted data. Section 26(b) provides for maximum fees of \$100 for a "small business concern" and \$2,500 for all others. Section 26(b)(2) of TSCA gives EPA authority to define "small business concern."

In addition, since proposal of this rule, the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (Pub. L. 100-202) was enacted which contains a provision authorizing EPA, in 1988, to assess and collect fees and to deposit an amount not to exceed \$25 million into a special fund which shall be available for appropriation, and remain available until expended, to carry out the Agency's activities in the programs for which the fees or charges are made.

II. Background

EPA issued a Notice of Availability of its "PMN User Fee Background Paper" (the paper), published in the *Federal Register* of July 11, 1986 (51 FR 25250) which included (1) the costs that the Agency believes may be defrayed by the collection of such fees, (2) the major options that the Agency had identified for implementing section 26(b), (3) a preliminary estimate of the economic impacts of such options, and (4) a possible definition of "small business concern."

On April 20, 1987, EPA issued a proposed rule (52 FR 12941) to establish a fee of \$100 for section 5 notices submitted by small business concerns, for low-volume exemption notices, and for test market exemption applications; and \$2,500 for all other section 5 notices.

The costs that EPA believes may be defrayed through fees collected pursuant to section 26(b) include all costs

associated with receiving, processing, storing, and analyzing data submitted pursuant to section 5, as well as all costs associated with regulatory and other actions that may be prompted by a submission. The direct cost elements that may be defrayed include the salaries and expenses (including supplies, training, travel, and equipment) of the EPA Office of Toxic Substances personnel associated with these section 5 activities, and the cost of associated data processing, computer equipment, and contractor effort. Direct costs also include support functions such as secretarial, clerical, and supervisory management. Indirect costs that may be defrayed include research and development in support of the PMN program. In addition, the Agency incurs other general overhead such as personnel processing, administrative management, budget execution, rent, and utilities.

EPA's analysis of direct costs (EPA, Office of Toxic Substances, D. Gutenson and J. Newsome, "Regulatory Impact Analysis") indicates that certain costs are generally incurred with every type of section 5 notice. These costs are associated with the activities of providing pre-filing assistance to submitters, providing protection for confidential business information (CBI), processing, duplicating, and storing documents contained in submission, and initial risk screening (usually including chemical characterization, environmental and human exposure analysis, and a preliminary toxicity review (including human and environmental effects)). These costs add up to approximately \$3,500 per submission. Office of Toxic Substances overhead, including supervisors and managers, clerical and secretaries, adds another \$1,800 per submission. Those submissions that require more detailed analysis and regulatory action cost approximately \$13,000 to \$15,000 more per submission. None of the above costs include indirect Agency costs, i.e., general Agency overhead such as costs incurred by the Office of General Counsel and the Office of Administration, and research and compliance costs.

The fees that the Agency is establishing pursuant to section 26(b) will recover substantially less than the total costs of administering section 5. For fiscal 1987, total Agency costs, both direct and indirect, could each approximately \$22 million compared to the maximum recovery of costs that the Agency could receive pursuant to section 26(b) of approximately \$3.8 million.

EPA received over 20 comments from the public on the proposed rule, and this final rule includes changes in response to the public comments. Those changes are discussed to Unit IV below.

III. Provisions of the Rule

After careful analysis of all the comments received by EPA of the proposed rule, and review of its economic analysis, the Agency has decided to establish a fee of \$100 for all section 5 notices received from small business concerns, \$1,000 for section 5 notices for certain intermediate chemical substances, and \$2,500 for all other section 5 submissions, except low-volume exemption notices and test market exemption applications for which no fee is required. The fees will be collected at the time of submission of the section 5 notice. EPA also has defined "small business concern" as any firm whose sales when combined with its parent company's (or the firm's sales, if no parent exists) totaled \$40 million or less in its fiscal year preceding the submission date of its section 5 notice.

The rule also clarifies the status of joint submitters. EPA allows persons to submit section 5 notices jointly with others (for example, see 40 CFR 720.40(e)). The fee is the same for a joint submission of a section 5 notice as for the same kind of notice submitted by a single firm. However, with respect to the lower \$100 fee for small business concerns, the lower fee does not apply to a joint submission unless all the joint submitters qualify as small business concerns under the proposed definition. Each of the joint submitters is required in the section 5 notice to certify that it qualifies as a small business concern under § 700.43.

IV. Response To Comments

The following unit summarizes the major comments and discusses the changes in the final rule in response to those comments.

EPA received a number of comments suggesting that the Agency's costs of administering the fee program might substantially offset its financial benefit. The Agency's economic analysis shows that the fee program should generate \$3.8 million; the costs of administering the program are estimated to total \$35,000. The Agency believes that the administrative costs are a negligible percent of the expected revenues.

Most comments asserted that the establishment of fees for section 5 notices could or would affect innovation, although all but three of these failed to comment on the degree of the effect. One industry association and one company asserted that the 10

percent foregone submission rate that EPA attributed to its proposed rule was sufficiently high to contravene TSCA section 2(b)(3) which directs the Agency to exercise its authority so as "not to impede unduly or create unnecessary economic barriers to technological innovation * * *". Another industry association, whose comments were subscribed to by a number of member companies, suggested that a correct analysis of the data upon which EPA relied for its economic analysis would indicate a foregone submission rate of about one-third, or over three times EPA's estimate.

With respect to the foregone submission rate of 10 percent associated with the proposed rule, and the 7.3 percent rate associated with the final rule, EPA believes that these estimates are very conservative and cannot be equated exactly with the fees' true effect on innovation. Unit V below clarifies this observation. The agency also believes that Congress clearly intended that it collect fees for section 5 notices and that inherent in that intention is the notion that fees will cause some firms to decide not to submit notices. However, the Agency believes that the rule's effect on innovation has been carefully weighed against the purpose of section 26(b), that is, to raise revenues to defray Agency costs, and thus is not "undue" as that term is used in section 2.

Concerning the foregone submission rate that should be calculated from the data base that the Agency used for its economic analysis (Centaur Associates Inc, 1985: Analysis of Withdrawn and Voluntarily Tested PMNs), the comment fails to take into account the Agency's statements with respect to the limits to the value of the Centaur study in predicting a company's decision to submit a PMN. The Centaur study was designed to evaluate a firm's attitudes to initiating testing after EPA had already issued a section 5(e) or 5(f) order placing restrictions on a new substance's production or use. The Agency is aware, from anecdotal evidence, that some firms' decisions not to test stemmed from liability concerns and considerations other than cost. The Agency's economic analysis also notes other misleading effects that would result from strictly interpreting the Centaur study. Consequently, the Agency used the Centaur study to estimate firms' marketing behavior from ranges of financial effects. Thus, as EPA stated in its January 1987 "Economic Analysis of Proposed PMN User Fee Rule" (in support of its April 20, 1987 proposed rule), " * * * if user fees are no more than 1.0 percent of the present value of sales, the user fees should have

a minimal impact on PMN sales and profits and mandatory user fees will not affect a firm's decision to commercialize the PMN chemical. User fees in the range of 1.0 to 3.0 percent of the expected present value of sales were assumed to have a moderate impact (i.e. 50 percent) on sales and an indeterminate effect on a firm's marketing decisions. If user fees are 3.0 percent or more of the present value of sales, it was assumed that user fees would have a severe impact on sales and that the impact is likely to prevent the firm from submitting a PMN."

EPA, in its reevaluation of the impact of its proposed fees on innovation, determined that low-volume exemption notices and test market exemption applications were extremely sensitive to even a nominal fee of \$100. The Agency's analysis shows a foregone submission rate of 36 percent for the low-volume exemption notices and 22 percent for the test market exemption applications. Because the Agency estimated fee revenue of less than \$20,000 for these two categories of submissions combined, and considering their apparent high sensitivity to even a nominal fee, EPA decided not to establish any fee for these two types of submissions.

A number of comments suggested that companies be permitted to pay either all or a portion of the appropriate fee at the time they submitted their Notice of Commencement of Manufacture or Import (NOC) to the Agency. As EPA stated in its April 20, 1987 proposed rule, its fee structure would not sufficiently defray the Agency's costs of reviewing PMNs (which is not dependent on new chemical substances' commercialization) if it permitted payment of fees with an NOC. The Agency estimates that it would receive less than \$1.5 million annually if it collected fees with NOCs. Furthermore, the Agency received no compelling arguments that collecting fees up front would have a significant impact on commercialization. One comment on the Agency's "PMN User Fee Background Paper" (see unit VI. RULEMAKING RECORD) stated that fees would not be a deciding factor as to commercialization after the PMN review is completed.

EPA received comments pointing out that the Agency treats consolidated PMNs as one in all respects except identification numbers, and consequently, it would be reasonable to charge just one fee for such consolidated PMNs. PMNs are consolidated as a result of a prenotice agreement between EPA and the submitter that the chemical

substances in question are nearly identical in structure and are expected to have the same properties. EPA establishes one file and reviews the consolidated PMNs in the identical manner as a single unconsolidated PMN. The Agency did not address this issue in its proposed rule (although it did consider the issue of PMNs related to a sequence of intermediates in the same manufacturing process). EPA agrees that because it treats a consolidated PMN as one notice for review purposes, it is reasonable to charge just one fee for a consolidated PMN and has modified the rule accordingly.

EPA, in response to a comment, is clarifying what it means by the term "sequenced intermediate". The Agency means a section 5 notice for any new chemical substance that is "intermediate" of another new chemical substance for which a section 5 notice is also submitted. 40 CFR 720.3 defines "intermediate" as any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of other chemical substances or mixtures, or that is intentionally present for the purpose of altering the rates of such chemical reactions.

In response to comments suggesting that charging a substantial fee for "intermediate" PMNs would create a significant hurdle to commercialization, EPA reevaluated the effect that a range of fees would have on the rate of foregone submissions for intermediate chemical substances. EPA's analysis shows that charging a fee of either \$1,000 or \$2,500 for each intermediate PMN that is submitted simultaneously with a "final product" PMN (for which a \$2,500 fee is also paid) would result in a foregone submission rate between 1 percent and 3 percent higher than the rate for all section 5 notices subject to the fee schedule in this rule. EPA has decided to impose the \$1,000 fee on the "intermediate" submissions primarily to promote the policy goals of more efficient administration and review, and to save the resources associated with multiple duplicative reviews when the "final product" PMN and the "intermediate" PMNs are submitted to EPA and reviewed at different times.

EPA asked for comments concerning the impact of charging the proposed \$2,500 fee for polymer exemption PMNs and received eight comments suggesting either a \$100 fee, reduced fee, or no fee. EPA reanalyzed the impact of a \$2,500 fee on polymer exemption PMNs and concluded that 11.1 percent of such submissions would be foregone. Because

that rate is not significantly different from either the overall foregone submission rate associated with the proposed rule (10 percent) or of the final rule (7.3 percent), and because the expected revenues involved (over \$500,000) are a significant proportion of the total revenues expected from the fee program, EPA decided to retain the \$2,500 fee for this category of submission.

EPA received two comments that express the concern that upcoming Agency rules for treating "new" microorganisms for PMN purposes may result in a fee burden that would have a chilling effect on innovation. The Agency had little experience with the subject of PMNs for microorganisms (EPA has received 12 PMNs to date for microorganisms). However, the Agency has, and expects to continue, to expend considerable resources reviewing this category of submission and has received no data or compelling argument to support lowering or eliminating fees for these submissions. The Agency will be considering fee issues when it proposes rules for review of microorganisms under TSCA. EPA recommends that companies comment on the effect of fees on the innovation of new microorganisms at the time that the Agency proposes those rules.

A number of comments questioned EPA's authority to collect fees pursuant to TSCA section 26 because at the time EPA proposed its fee rule the monies were expected to go to the general Treasury and thus not directly benefit the Agency. EPA's authority to collect fees under section 26(b) is not dependent on the disposition of the funds collected. In any event, as discussed in Unit I. above, recent budget legislation (Pub. L. 100-202) establishes a special fund for all agency user fees and provides for expenditure of those funds by the Agency subject to Congressional appropriation.

One comment recommended EPA established a \$100 fee for any section 5 notice that did not receive Agency review subsequent to its Chemistry Review and Search Strategy (CRSS) decision. The Agency has determined that it spends more than \$2,500 on handling a submission through the CRSS decision point, and is not persuaded that a lower fee is justified for this category of submission based solely on the argument that these submissions receive less attention than submissions that are reviewed subsequent to the CRSS decision.

In response to comments requesting that the Agency refund fees collected for

notices for chemical substances that, subsequent to payment, are found by the Agency to be already on the Inventory, EPA has modified the rule to provide for such refunds.

One comment suggested crediting fees against test expenses. While such crediting might promote some increase in worthwhile testing, the Agency believes that such effect is problematic; the crediting would be very difficult to administer and it probably would result in negligible fee revenues.

Concerns were expressed that EPA's review process will be unduly delayed as a result of a submitter's check going to a location different than the section 5 notice destination. EPA will review section 5 notices in the same manner that the Agency has been reviewing them provided that submitters certify on their submission that they have paid the appropriate fee. The Agency is establishing procedures to verify the receipt of the remittances that should provide adequate time to make the verification. Should EPA, subsequent to its verification effort, determine that the appropriate fee was not remitted at the time the section 5 notice was submitted, the Agency will consider the notice to be incomplete and will so notify the submitter. Note that submissions will be considered incomplete if they lack a certification that the fee has been paid.

EPA received a number of comments suggesting various changes to the Agency's interpretation of TSCA that, if adopted, would make many PMNs unnecessary, or would permit a greater number of PMN exemptions. The Agency is not addressing these comments because they are beyond the scope of this rulemaking.

A number of comments addressed the question of the international impact of the fees. One importer suggested that the fees would create a marketing advantage for companies already established in the U.S.; one domestic company suggested that because fees would adversely affect domestic innovation, domestic producers will increasingly find themselves at the mercy of innovative imports; one association and a number of domestic companies asserted that because importers likely would not pay fees for intermediate chemicals, then their "final product" chemicals would have a competitive advantage over the domestic producer who did pay fees for intermediate as well as "final product" chemicals. The Agency does not believe that the modest level of fees contained in this rule would significantly affect the competitiveness of domestic producers

vis-a-vis importers any more than it would affect innovation. The Agency's analysis of the effect of fees on decisions not to pursue PMN review suggests that fees in most instances will not affect a producer's decision to market and compete against either another domestic producer or an importer.

V. Economic Impacts

A. Introduction

In the Regulatory Impact Analysis (RIA), EPA considered the costs to society of this rule as being the sum of the direct costs to the government of administering the fee program and the net benefits that society would have realized from the new chemical substances that are foregone as a result of the fee rule. The fees themselves are not social costs, but rather transfers (the cost to industry of the fees equals the revenue received by the Agency). From the perspective of the regulated community, however, the fees are additional costs of doing business, and the RIA considers the impacts of these fees in relation to revenue from new chemical substances.

The Agency estimates that tracking and validating fees will cost the Agency approximately \$29,000 to \$35,000 per year. The Agency cannot quantitatively estimate the social cost of foregone activities, but it has estimated the number of foregone submissions, and has used this approach to reflect the potential for adverse effect on chemical innovation. EPA estimates that under the final rule 7.3 percent of the expected number of new chemical substance submissions would be foregone as a result of the user fee. The transfer (cost to industry and Agency revenue) is estimated to be \$3.8 million.

B. Methodology

To assess fully the costs of the fees to society, the Agency would need first to estimate the impact on the expected profitability of the new chemical substance as a result of any potential fee. Since the Agency believes that at some reduced level of profitability, a firm will choose not to submit a notice for a new chemical substance rather than incur any additional costs prior to commercialization, the second step would be to translate the impact on profitability into an estimate of the number of new substances that would be foregone. The third step would be to estimate the benefits associated with those foregone new substances. The Agency cannot estimate the benefits from the foregone new substances; the RIA captures the costs of the fee rule by

addressing the first two steps above, i.e., by analyzing the impact to industry in terms of the rate of foregone new substance submissions from any potential fee.

The impact is estimated by examining user fees as a portion of the present value of expected sales for a sample of new chemical substances, (potentially submitted in PMNs and exemptions). The Agency has observed a very low threshold for which companies decide to withdraw a submission rather than incur additional upfront costs. Decision criteria were developed from these observed thresholds which are used to predict the effect a user fee will have on a firm's decision to submit.

The Agency initially examined the impacts for 4 regulatory options. In addition to the categories of submissions considered in the economic analysis to support the proposed rule (small businesses, low volume exemptions and polymers), this analysis also estimates the impacts on submission of test market exemption applications and PMNs for intermediates (sequences of intermediates in the same manufacturing process).

The regulatory options are shown in Table I below.

TABLE I.—REGULATORY OPTIONS

Category description	Regulatory options			
	1	2	3	4
	(dollars per submission)			
Small business	100	100	100	100
Low volume exemption.....	100	100	100	100
Test market exemption.....	100	100	100	100
Polymer PMNs.....	2500	2500	100	100
Intermediate PMNs	2500	¹ 100 500 1000	2500	100
Others.....	2500	2500	2500	2500

¹ Regulatory Option 2 actually examines 3 alternative fees for PMNs for sequences of intermediates: \$100, \$500, \$1000. In each case, the fee for the final PMN in the sequence is set at \$2,500.

C. Impacts

The Agency estimates that 11.4 to 12.7 percent of submissions would be foregone as a result of the fees defined in these regulatory options. EPA estimates the cost of the fees (as well as agency revenue) to be between \$3.28 and \$3.99 million. Table II summarizes the impacts of options 1-4.

TABLE II.—IMPACTS OF INITIAL REGULATORY OPTIONS

Regulatory options	Percentage of submissions foregone	Total costs to industry (=EPA revenue) dollars million
1.....	12.7	3.99
2.....	12.2-12.5	3.87
3.....	11.9	3.49
4.....	11.4	3.28

The RIA indicates that two types of submissions are very sensitive to even low fees. Both low volume exemption notices (LVENs) and test market exemption applications (TMEAs) have high foregone submission rates (38 and 22.5 percent, respectively) at low (\$100) user fee requirements. Because of the extreme sensitivity of these two types of submissions to low fees, the Agency re-evaluated the impacts of each regulatory option with a \$0 fee LVENs and TMEAs. The results are shown in Table III below.

TABLE III.—IMPACTS OF MODIFIED REGULATORY OPTIONS

Regulatory option	Percentage of foregone submissions	Cost of submissions (=EPA revenue)
1 ¹	7.5	3.97
2 ¹	7.0-7.3	3.84
3 ¹	6.7	3.47
4 ¹	6.2	3.26

¹ Options are the same as options 1-4 in Table I, except that fees for low volume exemption notices and test market exemption applications are set at zero.

Providing an exemption to LVEN and TMEA submissions reduces the foregone submission rate approximately 50 percent for each regulatory option. The total cost to industry of the fee as well as the Agency revenue is reduced by less than 1.0 percent.

Under the final rule (modified regulatory option 2) the fee for submissions from small businesses is set at \$100, the fee for low volume exemption notices and test market exemption applications is set at zero, the fee for sequences of intermediates is set at \$1000 for each (with the fee for the final submission in the sequence set at \$2500), and the fee for all other submissions is set at \$2500. The Agency estimates that, with this fee structure, 7.3 percent of the expected number of new chemical substance submissions would be foregone as a result of the fees. This is probably an upper bound estimate of the impacts.

There are several sources of bias introduced that could result in an overestimate of the impacts. First, the

impact for the categories of submissions is based on a sample of submissions. The characteristics of some of the categories have changed since the time frame which the sample was drawn. Lower impacts would be expected if these differences could be quantitatively factored into the analysis.

Second, the decision criteria used to predict whether a firm will be chosen to submit are based on the observed behavior of firms in response to a request for testing in a TSCA section 5(e) order. Thus, the firm was operating with the knowledge that the Agency had health or environmental concerns over the introduction of the new chemical substance. A given dollar amount of fee is not expected to have as great an impact on the firm's decision to submit a notice as would the same dollar amount of a testing requirement. Therefore, the decision criteria result in an overestimate of foregone submissions.

Finally, although 7.3 percent of submissions may be foregone, this does not necessarily mean that a similar percentage of the value of new chemical substance innovation will be lost. Indeed, it seems likely that the substances in those submissions which are foregone would be among the least valuable; therefore the loss to society would be significantly smaller than the seven percent estimate would imply.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-260002A). A public version of the record, without any confidential business information, is available to the public in the TSCA Public Docket Office, Rm. NE-G004, 401 M Street SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The record includes information considered by EPA in developing this rule. The record now includes the following categories of information:

1. Federal Register notices.
2. Support documents.
3. Public comments.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of Regulatory Impact Analysis. This rule is not major as that term is defined in section 1(b) because: The annual effect on the rule on the economy will be less than \$100 million (less than \$4 million); it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region;

and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

This rule was submitted to the Office of Management and Budget (OMB) for review prior to publication as required by Executive Order 12291.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. (b)), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses because the fee proposed for small business concerns, although it will adversely affect the submission of some notices for new chemical substances is unlikely to have a significant impact on any firm's overall profitability.

C. Paperwork Reduction Act

The information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* have been assigned OMB control number 2070-0012 and 2070-0038.

The public reporting burden for this collection of information is estimated to average five minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

1. Chief, Information Policy Branch (PM-223), EPA, 401 M Street SW., Washington, DC 20460
2. Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503

(Attn: Desk Officer for EPA)

List of Subjects in 40 CFR Part 700

Chemicals, Environmental protection, User fees.

Dated: August 9, 1988.

Lee M. Thomas,
Administrator.

Therefore, 40 CFR, Chapter I, Subchapter R, is amended by adding Part 700, consisting at this time of Subpart C, to read as follows:

PART 700—GENERAL

Subparts A and B—[Reserved]

Subpart C—Fees

Sec.

700.40 Purpose and applicability.

700.43 Definitions.

700.45 Fee payments.

700.49 Failure to remit fees.

Authority: 15 U.S.C. 2625.

§ 700.40 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to collect fees from manufacturers, importers, and processors who submit notices and applications to EPA under section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) to defray part of EPA's cost of administering the Act.

(b) *Applicability.* This subpart applies to all manufacturers, importers, and processors who submit certain notices and applications to EPA under section 5 of the Act.

§ 700.43 Definitions.

Definitions in section 3 of the Act (15 U.S.C. 2602), as well as definitions contained in §§ 704.3 and 720.3 of this chapter, apply to this subpart unless otherwise specified in this section. In addition, the following definitions apply:

"Consolidated premanufacture notice" or "consolidated PMN" means any PMN submitted to EPA that covers more than one chemical substance (each being assigned a separate PMN number by EPA) as a result of a prenotice agreement with EPA (See 48 FR 21734).

"Exemption application" means any application submitted to EPA under section 5(h)(2) of the Act.

"Exemption notice" means any notice submitted to EPA under § 723.175 of this chapter.

"Final product" means a new chemical substance (as "new chemical substance" is defined in § 720.3 of this chapter) that is manufactured by a person for distribution in commerce, or for use by the person other than as an intermediate.

"Intermediate premanufacture notice" or "intermediate PMN" means any PMN submitted to EPA for a chemical substance which is an intermediate (as "intermediate" is defined in § 720.3 of this chapter) in the production of a final product, provided that the PMN for the intermediate is submitted to EPA at the same time as, and together with, the PMN for the final product and that the PMN for the intermediate identifies the final product and describes the chemical reactions leading from the intermediate to the final product. If PMNs are submitted to EPA at the same time for

several intermediates used in the production of a final product, each of those is an intermediate PMN if they all identify the final product and every other associated intermediate PMN and are submitted to EPA at the same time as, and together with, the PMN for the final product.

"Joint submitters" means two or more persons who submit a section 5 notice together.

"Person" means a manufacturer, importer, or processor.

"Premanufacture notice" or "PMN" means any notice submitted to EPA pursuant to section 5(a)(1)(A) of the Act in accordance with Part 720 of this chapter or § 723.250 of this chapter.

"Section 5 notice" means any PMN, consolidated PMN, intermediate PMN, significant new use notice, exemption notice, or exemption application.

"Significant new use notice" means any notice submitted to EPA pursuant to section 5(a)(1)(B) of the Act in accordance with Part 721 of this chapter.

"Small business concern" means any person whose total annual sales in the person's fiscal year preceding the date of the submission of the applicable section 5 notice, when combined with those of the parent company (if any), are less than \$40 million.

§ 700.45 Fee payments.

(a) *Persons who must pay fees.*

Persons submitting a section 5 notice to EPA shall remit for each such notice the appropriate fee identified in paragraph (b) of this section in accordance with the procedures in paragraph (e) of this section.

(b) *Fees.* Persons shall remit fee payments to EPA as follows:

(1) *Small business concerns.* Small business concerns shall remit a fee of \$100 for each section 5 notice submitted.

(2) *Others.* Persons other than small business concerns shall remit fees according to the type of section 5 notice as follows:

(i) *Premanufacture notices and consolidated premanufacture notices.* Persons shall remit a fee of \$2,500 for each PMN or consolidated PMN submitted.

(ii) *Intermediate premanufacture notices.* Persons shall remit a fee of \$1,000 for each intermediate PMN. However, for the PMN for the final product the person shall submit the fee in paragraph (b)(2)(i) of this section.

(iii) *Significant new use notices.* Persons shall remit a fee of \$2,500 for each significant new use notice submitted.

(iv) *Exemption applications.* Persons shall remit a fee of \$2,500 for each

exemption application submitted under section 5(h)(2) of the Act.

(v) *Exemption notices.* Persons shall remit a fee of \$2,500 for each exemption notice submitted under § 723.175 of this chapter.

(c) *No fee required.* Persons are exempt from remitting any fee for submissions under §§ 720.38 and 723.50 of this chapter.

(d) *Joint submitters.* Joint submitters of a section 5 notice are required to remit the appropriate fee identified in paragraph (b) of this section for each section 5 notice regardless of the number of joint submitters for that notice. To qualify for the fee identified in paragraph (b)(1) of this section, each joint submitter of a section 5 notice must qualify as a small business concern under § 700.43.

(e) *Remittance procedure.* (1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency, HQ Accounting Operations Board, attention: TS/PMN, P.O. 360227M, Pittsburgh, PA 15251. The remittance shall not be sent to EPA with the section 5 notice. The section 5 notice is to be sent to Document Processing Center, Office of Toxic Substances (TS-790), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(3) Persons who submit a section 5 notice shall place a unique identifying number, which must include the letters "TS" followed by a combination of 6 numbers (letters may be substituted for some numbers), on the front page of each section 5 notice submitted. The same identifying number and the submitter's name must appear on the corresponding fee remittance under this section. If a remittance applies to more than one section 5 notice, the person shall include the name of the submitter, the identifying number for each section 5 notice to which the remittance applies, and the amount of the remittance which applies to each notice. Any remittance not having the identifying name and number described above will be returned to the remitter.

(4)(i) Each person who remits the fee identified in paragraph (b)(1) of this section for a PMN, consolidated PMN, intermediate PMN, or significant new use notice shall write or type the words, "The company named in Part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of \$100 in accordance with 40 CFR 700.45(b)." under "CERTIFICATION" on

Page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710-25 (4-26-83)).

(ii) Each person who remits the fee identified in paragraph (b)(1) of this section for an exemption application under section 5(h)(2) of the Act shall include the words, "Each company identified in this application is a small business concern under 40 CFR 700.43 and has remitted a fee of \$100 in accordance with 40 CFR 700.45(b)." in the exemption application.

(iii) Each person who remits the fee identified in paragraph (b)(1) of this section for an exemption notice under § 723.175 of this Chapter shall include the words, "Each company identified in this notice is a small business concern under 40 CFR 700.43 and has remitted a fee of \$100 in accordance with 40 CFR 700.45(b)." in the certification required in § 723.175(i)(1)(x) of this chapter.

(5)(i) Each person who remits a fee identified in paragraph (b)(2) of this section for a PMN, consolidated PMN, intermediate PMN, or significant new use notice shall write or type the words, "The company named in Part 1, section A has remitted the fee specified in 40 CFR 700.45 (b)." under "CERTIFICATION" on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710-25 (4-26-83)).

(ii) Each person who remits the fee identified in paragraph (b)(2) of this section for an exemption application under section 5(h)(2) of the Act shall include the words, "Each company identified in this application has remitted a fee of \$2,500 in accordance with 40 CFR 700.45(b)." in the exemption application.

(iii) Each person who remits the fee identified in paragraph (b)(2) of this section for an exemption notice under § 723.175 of this chapter shall include the words, "Each company identified in this notice has remitted a fee of \$2,500 in accordance with 40 CFR 700.45(b)." in the certification required in § 723.175(i)(1)(x) of this chapter.

(f) *Fee refunds.* EPA will refund any fee paid for a section 5 notice whenever the Agency determines:

(1) That the chemical substance that is the subject of a PMN, intermediate PMN, exemption application, or exemption notice is not a new chemical substance as of the date of submission of the notice.

(2) In the case of a significant new use notice, that the notice was not required.

(3) The notice is incomplete under § 720.65(c) of this chapter.

(Approved by the Office of Management and Budget under Control Number 2070-0012 and 2070-0038)

§ 700.49 Failure to remit fees.

EPA will not consider a section 5 notice to be complete unless the appropriate certification under § 700.45(e) is included and until the appropriate remittance under § 700.45(b) has been sent to EPA as provided in § 700.45(e) and received by EPA. EPA will notify the submitter that the section 5 notice is incomplete in accordance with § 720.65(c) of this Chapter.

[FR Doc. 88-18452 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

Test Report Federal Register

Wednesday
August 17, 1988

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary of
Public and Indian Housing

Public Housing Child Care Demonstration
Program; Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-88-1811; FR-2467]

Public Housing Child Care Demonstration Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability.

SUMMARY: HUD is announcing the availability of \$5 million for fiscal year 1988 under the Public Housing Child Care Demonstration program (Sec. 117, Pub. L. 100-242, approved February 5, 1988). The demonstration is intended: (1) to provide grants to nonprofit organizations to assist in establishing child care facilities in lower income housing projects so that the parents or guardians of preschool or school-aged children may seek, retain or train for employment; and (2) to determine the extent to which the availability of child care services in lower income housing projects facilitates the employability of the parents or guardians of children residing in public housing. Grant funds may be used for the minor renovation of child care facilities and for certain operating expenses.

DATES: Submissions must be received in Room 4100 of HUD by 5:15 p.m., Eastern Standard Time, on October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Odessa Burroughs, Project Management Division Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4122, Washington, DC 20410, telephone (202) 755-7970. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

Background

Over the past several years, both HUD and Congress have expressed growing interest in increasing the economic mobility of public housing residents. Since 1982, HUD has initiated several demonstrations and technical assistance projects designed to improve the economic mobility and general living conditions of residents in public housing or families eligible for public or assisted housing (e.g., see the Project Self-Sufficiency notice published in the *Federal Register* on May 21, 1984, 49 FR 21433).

Under Section 222(a) of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), Congress authorized the Public Housing Child Care

Demonstration program ("PHCC") for the purpose of determining the feasibility of using public housing facilities to provide child care service for lower income families residing in public housing.

In enacting this demonstration program, it was Congress' belief that residents of public housing want to be employed or to enroll in training and education programs, but that many experience difficulty because they are unable to obtain convenient or affordable care for their children. In 1986, HUD completed a congressionally mandated study of child care programs in public housing projects. While the study disclosed a wide range of existing child care programs, it was unable to correlate the effect of these programs on public housing resident employment. (Copies of this study can be obtained by writing to HUD-USER, P.O. Box 280, Germantown, Maryland 20874).

On February 5, 1988, President Reagan signed the Housing and Community Development Act of 1987 ("the 1987 Act") (Pub. L. 100-242). Section 117 of the 1987 Act amends the PHCC demonstration under HURRA and provides that grants may be awarded to nonprofit organizations for the purpose of operating child care programs that enable the parents or guardians of young children to be employed or to receive employment training. The primary objective of the demonstration is to determine whether the availability of on-site child care enables public housing residents to obtain or retain jobs, or to enroll in training that might lead to employment.

Public Housing Agencies (PHAs) are encouraged to work with the nonprofit grantee to develop a comprehensive program of providing training, services, and employment for public housing residents in conjunction with the use of PHCC grant funds to establish child care facilities under this demonstration. This also applies to Indian Housing Authorities.

Program Requirements

1. Definitions

Lower Income housing project means housing developed, acquired, or assisted by a public housing agency under the United States Housing Act of 1937, other than under section 8. A project may contain one or more buildings.

Minor renovations means labor, materials, tools, and other costs related to the reconfiguration of space, installation of bathrooms, kitchens, renovations necessary to achieve compliance with physical accessibility standards for the handicapped, or that

are required to meet State or local licensing and building code standards, painting and lighting. Minor renovation does not include cost associated with lead-based paint inspection or abatement.

Nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

- (a) have a voluntary board;
- (b)(1) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or
- (2) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and
- (c) Practice nondiscrimination in the provision of assistance under the Public Housing Child Care Demonstration program in accordance with the authorities at section 13.1 of this NOFA.

Operating expenses means expenses that a grantee incurs for planning and development costs, administration, maintenance, minor or routine repairs, security, utilities, furnishings, equipment, insurance, and staff salaries.

2. Applicants

2.1. Eligibility. Any nonprofit organization is eligible to receive a grant under this Demonstration. The Department wishes to encourage applications from public housing resident associations, resident councils, and resident management corporations, as well as other community-based nonprofit organizations that have proven experience in providing child care or other related services to lower income families. HUD also encourages community-based, nonprofit organizations with this experience to submit applications for a grant under this Demonstration.

2.2. Multiple applications. An eligible nonprofit organization may submit multiple applications under this demonstration, so long as each application requests funding to establish a child care facility located in a different lower income housing project.

3. Grant Amounts

3.1. Maximum grant amount. To ensure that grants are provided to the largest number of nonprofit organizations practicable, the maximum grant amount is \$100,000. Applicants are advised that preference will be given to applicants demonstrating a high level of non-HUD funding and that intend to provide

continued support for the child care program following the expiration of the demonstration grant award.

3.2. Seed money. In making grant award determinations, HUD will give preference to those applicants that intend to use grant amounts as start-up capital or seed money to supplement funds from other sources. In this manner, the child care programs that are established under this demonstration can continue to operate without further HUD funding.

3.3. Non-HUD Funding. Other sources of funding that applicants should explore include: HHS Title XX; Department of Agriculture funding for meals; Job Training Partnership Act funds; State and local funding; grants from nonprofit social service agencies; and public housing authority funds, as well as the support of private voluntary and religious organizations.

4. Use of Grant Funds

Grant funds may be used for operating expenses and minor renovation of the child care facilities. HUD recommends that applicants use the grant award for start-up or one-time costs. While the Department discourages the use of grant funds for salaries, it will consider such applications if: (1) The program is of unusual merit; (2) the applicant demonstrates that there is no other source of funding available to pay these costs in the initial grant year; and (3) the applicant identifies additional sources of funds to pay for salaries in subsequent years. If major renovations are needed, they must be undertaken with other sources of funding. The guarantee of these funding sources and the timeliness of completion of the work must be demonstrated in order for the application to be approved.

5. Eligible Facilities

Applicants must demonstrate that the proposed facility:

- Will be located in a lower income housing project;
- Will be large enough to accommodate the proposed number of children;
- Will meet all State and local standards and requirements for child care facilities (including total square footage per child; adequate kitchen and bathroom facilities; accessibility for the handicapped; security); and
- Is not located in a PHA with outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings unless the PHA is implementing a HUD-approved plan or compliance agreement designed to correct the

area(s) of noncompliance; or that is in violation of the compliance agreement. Applications for "Family-based" child care facilities—i.e., facilities to be operated by a nonprofit organization using the homes of one or more residents of a project—may be considered for processing if they meet all of the eligibility requirements set out in this notice.

6. Staffing Guidelines

Applicants must demonstrate that the proposed child care facility will provide staff in sufficient numbers, and with adequate training, to meet applicable State and local standards. In making its grant award determinations, HUD will give preference to applicants that employ elderly public housing residents as program staff, on either a part-time or full-time basis.

7. Responsibilities of Grantees

All nonprofit organizations receiving grants under this demonstration must:

7.1. Enrollment restrictions. Ensure that the facility targets its enrollment to the children of lower income families residing in public housing (preference may be given to single parents). Non-PHA residents may enroll their children in the facility *only* if there are available openings in the child care facility, and there is no demand for those openings by PHA residents. Moreover, when filling vacancies, the nonprofit grantee is required to give preference to any lower income housing project residents whose names are placed on a waiting list;

7.2. Recordkeeping.

(A) **Budget.** Maintain accurate records of the child care facility's operation, expenditures, and revenues, and submit these records for review by HUD or the PHA, upon request;

(B) **Income and employment status of parents and guardians.** Maintain accurate records concerning the names, addresses, income and employment status of participating parents and guardians for submission to HUD. Such information shall be collected upon admission of a child to the facility, and updated thereafter on an annual basis for submission to HUD;

(C) **Participating children.** Maintain accurate records on the children participating in the program, including their ages; school grade level; any physical or emotional handicaps; child care received prior to entering the demonstration facility; and anticipating child care plans upon leaving the program. These records shall be submitted to HUD or the PHA upon request;

(D) **Annual performance report.** Provide HUD with an annual

performance report on the obligation and expenditure of funds for the eligible activities described in Section 4 of this Notice, together with data concerning the level of non-HUD funding received during the grant year. The annual performance report must be submitted by the end of the fiscal year for which grant amounts are made available; and

(E) **Periodic reports.** Submit periodic reports to HUD on the operation of the child care facility, as requested.

7.3. Insurance. Maintain general liability insurance with a minimum limit of \$500,000 per occurrence (unless obtained through the PHA), and workmen's compensation in compliance with State statute.

7.4. Non-HUD Funding. In order to generate income, the child care facility may charge reasonable fees for services, which may be based upon a sliding fee scale that corresponds to a family's income. Fees may be waived for good cause. However, the grantee is required to seek additional funding from non-HUD sources such as Title XX; USDA meals programs; State and local governments; the private sector; the PHA; residents of the lower income housing project; and residents of the community in order to achieve 100% non-HUD funding.

7.5. Compliance. Ensure compliance with all the requirements specified in this NOFA.

8. Responsibilities of the PHA

All PHAs that agree to provide facilities and to participate under this Demonstration must:

8.1. Notify tenants of child care services. Undertake affirmative measures to inform lower income families residing in the project in which the child care facility is to be located of the existence and fee structure of the child care facility;

8.2. Supervise maintenance. Ensure that all routine maintenance for the child care facility is undertaken by the nonprofit grantee;

8.3. Identify participants and resident employees. Assist the grantee in identifying and selecting public housing participants and potential resident employees;

8.4. Utilities. Provide utility services to the facility, if such services were being provided by the PHA to the facility before implementation of the demonstration program; and

8.5. Miscellaneous assistance. Provide other assistance to the grantee as needed, and as agreed upon by the PHA and the grantee (i.e., assist the grantee in seeking non-HUD funding or in preparing reports for submission to

HUD). While PHAs are *not* required to provide funds to grantees under this demonstration, they may elect to do so).

9. Review and Approval Process

9.1. Applications received on time will first be reviewed for eligibility. Applications which do not meet the following basic eligibility requirements will be disqualified from further processing:

- The applicant must be a nonprofit organization;
- The child care facility must be located in a lower income project;
- The project must be designed to target its enrollment to the children of lower income families residing in public housing;
- The child care program described in the application must not be in operation at the time the application is submitted;
- The application must provide assurances from the PHA that it will provide the space for the child care facility; and
- The application must demonstrate that the child care program will comply with all applicable State and local laws, regulations, and ordinances.

Applications that meet these eligibility requirements will also be reviewed for completeness. HUD reserves the right to request additional information from applicants in order to ensure completeness. If additional information is requested, it will be required to be submitted by a date to be established by HUD. If the applicant has not submitted the information by the due date, the application will be considered incomplete and disqualified from further processing.

9.2. HUD will rate all applications deemed to be eligible and complete based on the selection factors in section 11. HUD will then rank all applications based on rating scores.

9.3. In accordance with section 117 of the HUD Act of 1987, HUD may substitute one or more highly rated applications if the top rated applications under the selection criteria do not ensure equitable geographic distribution among urban and rural areas and among nonprofit organizations providing child care services in lower income housing projects of varying size.

10. Application

10.1. *Submission guidelines.* Nonprofit organizations interested in operating a child care facility in accordance with the requirements of this NOFA should submit an original plus two copies of the application materials discussed below,

on 8½"×11" paper, to Robert Hundley, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4100, Washington, D.C. 20410 by October 3, 1988. Applications received after 5:15 p.m. on this date, or applications that fail to address all of the application requirements set out below, will be disqualified from receiving a grant award and returned.

10.2. *Application requirements.* The application must contain the following information:

- (1) The applicant's name, address, telephone number and the name of a responsible contact person;
- (2) Evidence of the applicant's nonprofit status. This evidence may include photocopies of nonprofit documentation;
- (3) A description of the nonprofit organization, including the composition of its governing board, staff experience, prior experience in providing social and educational services to lower income families, and its ability to implement and manage the proposed child care program;
- (4) A narrative statement identifying the need for the proposed child care facility in the designated lower income housing project, including the number of preschool and school children residing in the project, the adequacy of other child care programs and the number of residents that require the services of a child care facility in order to obtain, train, or retain employment;

(5) A description of the proposed child care facility, including the location, anticipated number, race, ethnicity and age range of the children to be served; the types of services to be provided; the anticipated number of employees that will be working on a part- or full-time basis (and whether any of these employees are expected to be elderly residents of the designated public housing project) the anticipated number of volunteers (if any); the applicant's proposed method of selecting participants; the anticipated fee structure for payment of child care services (including sliding fee scale and in-kind services);

(6) The projected opening date for the child care facility, and a description of any plans for its minor or major renovation. The applicant must provide a timetable for completing major renovations, indicating the source of its funding, and a timetable for meeting the projected opening date;

(7) A description of the applicant's proposed method of informing residents of the availability of child care services in the designated lower income housing project;

(8) A proposed budget for the grant period identifying the child care facility's projected revenues and expenses. Projected expenses must include: (1) both one-time start-up expenses and ongoing operational expenses, and (2) the total number of child/hours of care to be provided and the cost per child/hour of service;

(9) A statement of the nonprofit applicant's specific need for the HUD grant funds, and how such funds will be used (see discussion at section 4 regarding use of grant funds);

(10) A statement of how the nonprofit applicant intends to continue operation of the child care facility following expiration of the HUD grant. If the applicant proposes to use grant funds for salaries, the information on how this activity will be funded must be specifically provided;

(11) The length of the grant period;

(12) A letter of commitment from the PHA Board indicating:

(a) its support for the proposed child care facility; (b) its agreement to provide space for the child care facility in the designated lower income housing project; (c) that the premises designated for use as the child care facility conform to the lead-based paint requirements specified at section 13.2 of this NOFA, or that the PHA will undertake such measures before the opening of the child care facility; (d) its willingness to undertake affirmative measures to inform residents of the lower income housing project of the availability of the child care facility; (e) its agreement to provide the nonprofit grantee with information concerning the employment and training status of parents residing in the designated lower income housing project; (f) the PHA's experience with programs such as Project Self-Sufficiency, resident management, or other programs designed to provide employment and training opportunities for PHA residents; and (g) its agreement to comply with other requirements specified in this NOFA;

(13) A statement from the applicant and PHA as to how data required under this NOFA will be compiled within the confines of the PHA's existing reporting system, or otherwise;

(14) A description, including letters of commitment from agencies who will provide resources to the children to be served by the child care facility and their parent(s);

(15) Certifications that—

(a) The proposed child care facility will serve preschool children during the day, school children after school, or both, in order to permit the parents or guardians of such children to obtain,

retain, or train for employment. If the proposed child care facility serves infants, the provision of these services must also be in compliance with State or local standards;

(b) There is no child care facility in existence in the designated lower income housing project prior to the receipt of grant funds under this demonstration;

(c) The proposed child care facility will be designed to involve the participation of the parents and guardians of children utilizing the facility;

(d) The proposed child care facility will be designed to employ, on a full-time or part-time basis (to the extent practicable) elderly residents of the designated lower income housing project;

(e) The proposed child care facility and any renovations will comply with all applicable State and local laws, regulations, and ordinances;

(f) The applicant will maintain the necessary insurance coverage for the proposed child care facility in order to comply with State and local requirements (workmen's compensation and general liability);

(g) The applicant will initially and on a quarterly basis record and report statistics to HUD (a) on the employment obtained or retained and job related training employment results of the parents or guardians of children residing in the lower income housing project that participate in the child care facility, and (b) the total units of service provided to date and the cost per unit of service (A unit of service is one child for one hour. For example, 3 child/hours could be: one child for 3 hours; or 3 children for one hour; or one child for 2 hours and one child for one hour.);

(h) The applicant, in its recruitment and selection of staff, will require a declaration from all prospective employees that lists all pending and prior criminal arrests, and any charges related to child abuse, neglect or child sexual abuse, and their disposition, and all felony convictions and current criminal charges. The declaration may exclude traffic fines of \$50.00 or less, any offense (other than an offense related to child abuse, child sexual abuse, or a violent felony) committed before the prospective employee's 18th birthday which was adjudicated in a juvenile court or under a youth offender law, and any conviction set aside under the Federal Youth and Corrections Act or similar State authority; and

(i) The applicant will comply with the requirements of Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the

Rehabilitation Act of 1973 and Executive Order 11063—Equal Opportunity in Housing.

11. Selective Rating Factors

Each of the following selective rating factors will be considered by the Department in evaluating an application for a grant award. These factors are listed in their order of importance:

(1) The extent of demonstrated need for a child care services program, as reflected by: (a) The number of preschool and school-aged children residing in the lower income housing project; (b) the adequacy and availability of other child care programs; and (c) the number of residents in the lower income housing project that require the services of a child care facility in order to obtain, train, or retain employment;

(2) The extent to which the applicant has obtained commitments from the PHA, social service providers and volunteer agencies for resources adequate to meet the immediate needs of the children who will be served by the child care facility and their parents. For example, training and employment assistance, diagnostic services, and volunteer aides;

(3) The ability of the applicant to obtain financial assistance from other public and private sources to be utilized in the Public Housing Child Care Demonstration Program. Provide evidence that the nonprofit grantee has the capacity to sustain the program after the expiration of the grant term. Preference will be given to those applicants that intend to: (a) use grant amounts as start-up capital or seed money to supplement funds from other sources; and (b) provide non-HUD funding at the start of the grant term, and have a strategy for achieving 100 percent non-HUD funding following the initial HUD grant;

(4) The efficiency of the provision of basic child care and other services: this will measure the total cost per child/hour of care provided;

(5) The extent to which parents and guardians of children residing in a lower income housing project, and elderly PHA residents, are encouraged to participate in the child care program;

(6) The extent to which the proposed child care facility offers a broad or unique range of services that exceed basic custodial care. These services should include hiring a director with an educational background and training in early childhood development, and offering educational instruction or programs to the parents and staff;

(7) The extent to which a grantee can become operational within a relatively

brief period of time following the disbursement of funds by HUD to the grantee;

(8) The applicant's experience in providing (or ability to provide) child care services;

(9) The level of participation by the PHA in other employment-related programs serving public housing residents; and

(10) Preference may be given to public housing resident associations, resident councils, and resident management corporations, as well as other community-based nonprofit organizations that have proven experience in providing child care or other related services to lower income families.

12. Grant Administration

12.1. Except for funds necessary to finance start-up costs associated with initial staffing, minor renovation, and similar approved expenditures that may precede licensing, no grant funds may be disbursed until the grantee submits to HUD a photocopy of the appropriate license to operate the proposed child care facility.

12.2. *Grant agreement.* The grant will be made by means of a grant agreement executed by HUD and the grantee.

12.3. *Responsibility for grant administration.* Grantees are responsible for ensuring that public housing child care demonstration grants are administered in accordance with the requirements of this NOFA and other applicable laws.

12.4. *Deadlines for using grant amounts.* A nonprofit grantee must obligate all grant amounts within one year of the date on which grant amounts are awarded to the grantee by HUD.

12.5. *Method of payment.* Grantees shall be advanced grant amounts under this demonstration by the submission of a properly signed original and two (2) copies of Standard Form 270, Request for Advance or Reimbursement.

12.6. *Adjustment and deobligation of grant funds.*

(A) HUD may deobligate grant amounts awarded under this demonstration under the following circumstances:

(1) Grant amounts designated for use as operating costs may be deobligated if the proposed child care facility operations are not begun within a reasonable time following selection;

(2) If, as a result of an audit, HUD determines that the grantee has expended funds for uses that are ineligible under this demonstration, HUD may adjust or deobligate grant

amounts, as appropriate, to recover the ineligible costs; and

(3) The grant agreement will set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

(B) Upon the deobligation or adjustment of grant funds, HUD may:

(1) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability; or

(2) Reconsider applications that were submitted in response to the most recently published notice of fund availability, and select applications for funding with deobligated funds. Such selections will be made in accordance with the requirements of Section 11 of this NOFA.

13. Applicability of Other Federal Requirements

Use of public housing child care demonstration grant amounts requires compliance with the following additional requirements:

13.1. *Nondiscrimination.* The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 (Fair Housing Act) and implementing regulations issued at 24 CFR Part 105; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1; Section 504 and implementing regulations at 24 CFR Part 8; and Executive Order 11063 and implementing regulations; and all applicable State and Federal nondiscrimination statutes. HUD encourages the full participation of minority nonprofit organizations;

13.2. *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing

regulations at 24 CFR Part 35. Structures constructed or substantially rehabilitated prior to 1978 must be inspected to determine whether defective paint surfaces exist, in accordance with the requirements of 24 CFR Part 35. In addition, all applicable surfaces in the child care facility must be tested for the presence of lead-based paint as specified under 24 CFR 965.706. If detected, abatement procedures under Part 35 must be undertaken (as revised on June 6, 1988; see 53 FR 20790). Structures that have been previously tested and abated in accordance with revised Part 35 standards are not required to be retested;

13.3. *OMB Circulars.* The requirements of OMB Circular Nos. A-110 (relating to Uniform administrative requirements for grant and agreement with Institutions of Higher Education, Hospitals and other Nonprofit organizations), and A-122 (relating to Cost Principles applicable to Institutions of Higher Education, Hospitals and other nonprofit organizations). (Copies of these circulars can be obtained from EOP Publications Office, 725 17th Street, NW., Suite 220, Washington, DC 20503);

13.4. *Use of debarred, suspended or ineligible contractors.* The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status; and

13.5. *Coastal Barriers.* In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this NOFA may be made available within the Coastal Barrier Resources System.

13.6. *Environmental review.* HUD will assess the environmental effects of each application with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's

implementing regulations at 24 CFR Part 50. Any application that HUD determines would require an Environmental Impact Statement (EIS) in accordance with 24 CFR Part 50, Subpart E will not be eligible for assistance under this NOFA. As a result of its environmental review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. HUD will consider any anticipated time delays in the selection process.

Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget under the Paperwork Reduction Act and have been assigned OMB control number 2577-0110.

Authority: Section 222 of the Housing and Urban-Rural Recovery Act of 1983, as amended by section 117 of the Housing and Community Development Act of 1987 (Pub. L. 100-77, approved February 5, 1987); Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: July 27, 1988.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-18597 Filed 8-16-88; 8:45 am]

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Federal Register

**Wednesday
August 17, 1988**

Part VII

Environmental Protection Agency

**Linuron; Preliminary Determination To
Conclude the Special Review; Notice**

**ENVIRONMENTAL PROTECTION
AGENCY**

[OPP-30000/41B; FRL-3430-8]

**Linuron; Preliminary Determination To
Conclude the Special Review****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Notice.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing linuron and sets forth the Agency's assessment of the risks and the benefits associated with the pesticidal uses of linuron. On September 26, 1984, the Agency issued a Notice of Special Review of Certain Pesticide Products for registrations of products containing linuron based on oncogenic concerns (49 CFR 37843). This Notice announces the Agency's intent to include the Special Review of pesticide products containing linuron.

DATE: Written comments on this Notice should be received on or before October 17, 1988.

ADDRESS:

Submit three copies of written comments, bearing the document control number "OPP-30000/41B" by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked CBI may be disclosed publicly by EPA without prior notice to the submitter. The linuron public docket, which contains all non-CBI written comments and the corresponding index, will be available for public inspection and copying in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Mark T. Boodee, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office

location and telephone number: 1921 Jefferson Davis Highway, Arlington, VA (703 557-7402).

SUPPLEMENTARY INFORMATION: This document presents the basis for the Agency's regulatory decision to terminate the Special Review of linuron and contains five units. Unit I contains an introductory section. Unit II describes the legal background behind the Special Review process. Unit III provides an evaluation of the risks associated with exposure to linuron. Unit IV presents the Agency's conclusions and the proposed regulatory decision. Unit V provides an opportunity for public comments and describes public docket procedures.

I. Introduction

Linuron is the common name for 3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea. Linuron is most commonly sold under the trade names Lorox, Linex, Afalon, and Sarclex. It is available as a wettable powder, a granular, and a flowable or soluble concentrate.

Linuron was first registered as a pesticide in 1960. It is a substituted urea herbicide used mainly for pre-emergence and, in some crops or sites, postemergence control of certain troublesome broadleaved weeds and annual grasses on terrestrial food and non-food sites. Food sites include soybeans, field and sweet corn, cotton, sorghum, wheat and other small grains, asparagus, carrots, celery, parsnips, and potatoes. Non-food sites include alleys, fencerows, fairways, golf tees, highway rights-of-way, sodfields, streets, and vacant lots. Linuron has limited contact action and when it is used postemergence, it is normally applied with a surfactant. Linuron is often selected for use on light to medium soil types with low organic matter, especially in soybeans, because it is less phytotoxic than its major alternative on those soils.

In the United States, EPA estimates that 4.8 million to 6.2 million pounds active ingredient are used per year. Approximately 84 percent, or approximately 5.2 million pounds, of linuron used annually in the United States is used on soybeans; the remaining 16 percent is applied to asparagus, carrots, celery, potatoes, parsnips, and other minor use sites including non-foodsites listed above. Its home garden and greenhouse uses account for less than 1 percent of all linuron usage.

E.I. du Pont de Nemours and Company, Inc., Drexel Chemical Company, and Griffin Corporation produce the technical material. Fourteen

registrants hold Federal registrations for approximately 30 pesticide products containing linuron as an active ingredient.

The Registration Standard for pesticide products containing linuron was issued on June 29, 1984. The Agency reviewed information concerning the potential adverse effects associated with uses of linuron which indicated that linuron induces dose-related tumors in rats and in mice. The Registration Standard required submission of product and residue chemistry, environmental fate, toxicology, and wildlife data. Certain label restrictions were also required including a tumor warning statement regarding linuron's oncogenic effects, restricted use classification, and a requirement that protective clothing be worn during linuron application.

On September 26, 1984, the Environmental Protection Agency issued a notice of Special Review of Certain Pesticide Products for registrations of products containing linuron (49 FR 37843) which detailed the basis for the Agency's decision to initiate a Special Review. The Agency determined that pesticide products containing linuron met or exceeded the risk criterion in 40 CFR 162.11(a)(3)(ii)(A). That section provided that a Special Review, previously known as Rebuttable Presumption Against Registration (RPAR), should be conducted if the use of a pesticide "induces oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation or dermal exposure * * *."

The Special Review was initiated based on laboratory data which indicated that linuron induced statistically significant dose-related tumors in rats and mice. Specifically, in a 2-year feeding study male rats developed interstitial cell testicular adenomas (benign tumors). In a 2-year mouse feeding study, a statistically significant increase in hepatocellular adenomas was observed.

II. Legal Background**A. The Statute**

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 *et seq.*). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the

environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel this registration under section 6 of FIFRA.

B. The Special Review Process

The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR) process, is a mechanism by which the Agency collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. The Special Review process is currently governed by 40 CFR Part 154. At the time of initiation of the linuron Special Review, the Special Review process was governed by 40 CFR Part 162.

Through the Special Review process the Agency: (1) Announces and describes the Agency's risk concerns regarding pesticidal use based on certain risk criteria, (2) establishes a

public docket, (3) proposes a regulatory decision, (4) solicits comments from the public on the proposed decision and issues concerning the Special Review, (5) responds to significant comments from the Secretary of Agriculture and the Scientific Advisory Panel, and (6) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

Pursuant to 40 CFR 154.31, the Administrator is required to prepare a Notice of Preliminary Determination after the close of the comment period on the Notice of Special Review. The Notice of Preliminary Determination must respond to comments submitted in response to the Notice of Special Review, and for each use of a pesticide product that was subject of the Notice of Special Review shall include a determination whether the use satisfies the risk criteria set forth in 40 CFR 154.7. At the time of the initiation of the Special Review of linuron the risk criterion for oncogenic effects was set forth at 40 CFR 162.11(a)(3)(ii)(A). After the close of the comment period on this Notice, the Agency will publish a Notice of Final Determination.

Issuance of this Notice means that the Agency has assessed the potential adverse effects associated with the use of linuron and preliminarily determined

that the risk criterion for oncogenic effects set forth in 40 CFR 154.7(a)(2) has not been exceeded. Therefore, this Notice of Preliminary Determination to conclude the Special Review of linuron is being issued pursuant to 40 CFR 154.3.

III. Risk Determinations

A. Basis for Special Review

As noted in Unit I of this Notice, the Special Review of linuron was initiated because of a study in rats and one in mice that indicated a dose-related tumor response. In the 2-year rat study, conducted at Haskell Laboratory (Kaplan, A.M. et al., 1980), researchers fed linuron to Charles River CD-1 rats. A control group and 3 dose groups of 50, 125, and 625 parts per million (ppm) linuron were used. Each group contained 80 male and 80 female rats. Male rats developed interstitial cell testicular adenomas. Most of the tumors developed at the end of the study and were not regarded as life-threatening. Rat mortality was not dose-related. The frequency of testicular adenomas increased with dose, and the increase in number was statistically significant when compared to the controls for the two highest dose groups. The incidence of interstitial cell adenoma in the testes is noted in the following Table 1:

TABLE 1.—THE INCIDENCE OF TESTICULAR ADENOMAS IN MALE RATS FED LINURON FOR TWO YEARS

Group	Dose	Number of animals with tumors/total number of animals	Percentage
1. Controls	0 ppm	4/68	5.9
2. Low dose	50 ppm	9/56	9.1
3. Mid dose	125 ppm	19/64	29.7
4. High dose	625 ppm	37/66	56.1

At the high dose group, researchers observed losses in female body weights.

In a study by Wood et al., (1982), researchers fed linuron to male and female Charles River CD-1 mice at levels of 0, 50, 150, and 1,500 ppm in the diet. Eight groups (four male and four

female dose groups) of 80 mice each were used in this study. Survival was similar in control and treated groups. Female mice developed a statistically significant increase in hepatocellular adenomas in the highest dose group, and male mice developed borderline

statistically significant hepatocellular adenomas only in the lowest dose group. The incidence of hepatocellular adenoma in both sexes is noted in the following Table 2:

TABLE 2.—THE INCIDENCE OF HEPATOCELLULAR ADENOMAS IN MALE AND FEMALE MICE FED LINURON FOR TWO YEARS

Group	Dose	Number of animals with tumors/total number of animals	Percentage
Males:			
1. Controls	0 ppm	9/79	11.4
2. Low dose	50 ppm	18/80	22.5
3. Mid dose	150 ppm	10/80	12.5
4. High dose	1,500 ppm	16/78	20.5
Females:			
1. Controls	0 ppm	5/79	6.3
2. Low dose	50 ppm	6/79	7.6
3. Mid dose	150 ppm	8/76	10.5

TABLE 2.—THE INCIDENCE OF HEPATOCELLULAR ADENOMAS IN MALE AND FEMALE MICE FED LINURON FOR TWO YEARS—Continued

Group	Dose	Number of animals with tumors/total number of animals	Percentage
4. High dose.....	1,500 ppm.....	20/80	25.0

Microscopic examination of mouse tissues and organs showed effects in the liver and spleen of treated male and female mice. These compound-related effects included hepatocytomegaly, hepatocellular cytoplasmic alteration, hepatocellular vacuolization, hemorrhage, and necrosis. Due to the diverse nature of the oncogenic response with respect to the dose (low dose, males; high dose, females), the presence of benign tumors with no progression toward malignancy, and the lack of a definite dose-response curve, the tumors seen in the 2-year mouse feeding study are considered to be a minimal tumorigenic response. Neither the liver tumors nor the other effects noted in this study were used by the Agency for quantitation of dietary risk.

The 2-year rat study was used as the basis for calculating a preliminary quantitative oncogenic risk assessment from dietary exposure for the general population and to farmers applying linuron to soybeans.

In the Notice of Special Review, the Agency estimated dietary exposure for three different exposure assumptions. The first estimate was based on tolerances and it was assumed that residues were at 100 percent of these levels and that 100 percent of the crop was treated. Based on actual residue levels found in the field, the second estimate used the maximum residues expected and assumed 100 percent crop treated. The final estimate was based on the maximum residues expected multiplied by an estimate of the percent crop treated. The Agency believes the most realistic estimate of dietary exposure was the third. Using the linearized multi-stage model to calculate a preliminary risk estimate for maximum expected residues and percent crop treated, upper-bound lifetime oncogenic dietary risk from exposure to linuron was estimated to be 2×10^{-5} . This value represents a 95 percent probability that the risks from dietary exposure are no greater than two people per 100,000 developing tumors from a lifetime dietary exposure. The lifetime dietary oncogenic risk ranged from 1×10^{-3} to 2×10^{-5} for the three different dietary exposure assumptions.

The Agency also evaluated potential occupational oncogenicity risk to farmers applying linuron to soybeans

under three different exposure assumptions. The first estimate represented maximum exposure because it assumed the farmer was not wearing protective clothing. The second estimate assumed the farmer was wearing protective clothing which reduced exposure 80 percent. It was also assumed that some pesticide filtered in around collar edges, cuffs, etc. The third estimate assumed the farmer was wearing protective clothing and exposure was reduced 100 percent for areas covered by protective clothing. However, exposure to unprotected areas was still assumed. Average daily dermal exposure for a farmer during ground application of linuron to soybeans was calculated to be 3×10^{-3} milligrams/kilogram/day (mg/kg/day), 4×10^{-4} mg/kg/day, and 8×10^{-5} mg/kg/day for each assumption, respectively. These estimates assumed that the farmer mixed and loaded as well as applied linuron. The Agency believed the most reasonable exposure would occur under the second exposure assumption, that exposure was reduced 80 percent by protective clothing. Upper-bound estimated lifetime oncogenic risk to a soybean farmer applying linuron was calculated to be between 5×10^{-5} (1 day per year) and 3×10^{-4} (6 days per year), or 5 to 30 people at risk per 100,000. This value represents a 95 percent likelihood that non-dietary risks are not greater than those estimated above. Oncogenic risk to farmers was calculated solely for dermal exposure absorption since it is the primary mode of exposure; 100 percent dermal absorption was assumed.

In a recent report (May 1987), the National Academy of Sciences (NAS) estimated the oncogenic risks posed to consumers by pesticides. The NAS report estimated that linuron residues posed a 10^{-3} dietary risk to consumers. That estimate was based on the assumptions that 100 percent of the crop was treated and that residues were at tolerance limits (dietary exposure estimate 1 in the Notice of Special Review), two assumptions which the Agency considers to be unrealistic. Use of assumptions the Agency believes are more realistic—maximum residues expected times percent of crop treated (dietary exposure estimated 3 in the Notice of Special Review)—would result

in a decrease in the NAS risk estimate of approximately two orders of magnitude (i.e., risks in the range of those presented in the Notice of special Review). However, for reasons discussed in Unit III.B.4 of this Notice, the Agency now believes the evidence of linuron's carcinogenicity is weak enough that it does not support quantification of risk and that even the 10^{-5} risk estimate is an over-estimate of risk.

B. Additional Information

Subsequent to the Notice of Special Review, EPA received additional exposure and toxicity data. These data are discussed below.

1. *Exposure Data*—a. *non-dietary exposure*. Additional data include a worker exposure study (Guinivan, R.A., 1984), a dermal penetration study (Anderson, J.J., 1984), residue data for the major uses of linuron, and environmental fate data.

The worker exposure study showed that the combined annualized daily dermal exposure (for pre-emergence use only) was approximately 1×10^{-3} mg/kg/day. For both pre- and postemergence use, the combined dermal exposure was estimated to be 2×10^{-3} mg/kg/day. These exposure levels are approximately equivalent to those calculated in the Notice of Special Review for estimate 1 (no protective clothing assumed).

After the Registration Standard was issued, Du Pont submitted a valid dermal penetration study (Anderson, J.J., 1984). Results of the study indicated that only 1 to 2 percent of linuron penetrates the skin. For the applicator risk assessment in the Notice of Special Review, the Agency had assumed 100 percent dermal penetration and a risk to mixer/loader/applicators in the 10^{-4} range. One to 2 percent dermal penetration would significantly lower the internal absorbed dose and the estimated non-dietary risk by 1 to 2 orders of magnitude. Thus, even if the Agency were to quantify applicator risk now, the risks (in the 10^{-5} to 10^{-6} range) would be considered acceptable.

b. *Dietary exposure*—i. *crop residues*. Additional residue data for the major uses of linuron have also been received from Du Pont in response to the

Registration Standard and a Data Call In notice issued on May 19, 1986. Average residue levels for soybeans, the major crop use of linuron, were approximately 0.07 ppm, compared to a tolerance level of 1.0 ppm. These additional residue data showed actual residue levels similar to those used for the dietary exposure estimates in the Notice of Special Review. Therefore, if EPA were to quantify dietary risk from the latest residue data submission, it is believed that the upper-bound lifetime risk would be no greater than 10^{-5} and possibly much lower. As noted previously, the risk estimate in the NAS report was based on residues that were at tolerance limits.

ii. *Drinking water residues.* Although not a basis for Special Review and no exposure or risk estimates were calculated, the Agency did note in the Notice of Special Review that dietary exposure through water contamination was possible. Linuron run off into rivers and leaching to aquifers could contaminate drinking water which is drawn from either surface or ground water. As stated in the Notice of Special Review, limited monitoring data from 1982 to 1984 in northwestern Ohio showed the presence of linuron at very low levels (mean concentrations ranged from 0.00 to 7.16 parts per billion (ppb)) in surface and tap water. Although the data showed that linuron was present in

the surface water of northwestern Ohio, the data were presumed to represent a worst case situation since use of pesticides on soybeans and corn in this area is considered to be extremely heavy. To evaluate the potential for linuron to contaminate drinking water, product chemistry and environmental fate studies were required on an expedited basis. Data were submitted by the registrant and have been reviewed by the Agency. These data indicate that although the linuron parent compound moderately leaches, its mobility decreases as soil organic matter increases. However, the studies did not provide enough information to assess the ability of linuron's soil degradation products to contaminate drinking water. Du Pont was notified of the inadequacy and the Office of Pesticide Programs is currently reviewing information submitted by Du Pont which is intended to clarify and supplement the original data submission.

Linuron has been included in the Drinking Water Wells Survey being conducted by the Agency's Office of Drinking Water and Office of Pesticide Programs. Although not identified as a chemical thought to have a high risk potential for leaching into groundwater, linuron was included because it is detectable by the method used for testing well water. If levels are detected,

a Health Advisory may be established and other regulatory measures may be considered.

The need for additional ground water data will be determined after reviewing environmental data and/or the Drinking Water Wells Survey data.

2. *Toxicity Data.* Additional toxicity data include a full battery of mutagenicity data, a multi-generation rat reproduction study, a feeding study, and a set of studies investigating the mechanism of action of tumor formation.

Du Pont submitted all required mutagenicity data representing the three general categories of mutagenicity testing (i.e., gene mutations, structural chromosomal aberrations, and direct DNA damage and repair). The Agency has reviewed the mutagenicity studies submitted by Du Pont and concluded that linuron is not a mutagen. The data showed no evidence of adverse genetic or chromosomal effects in any study.

A multi-generation rat reproduction study conducted by Du Pont was submitted in response to the Notice of Special Review and was reviewed by the Agency. Three successive generations of Charles River Crl:CD rats were fed dietary linuron at 0, 25, 125 and 625 ppm. The incidence of testicular adenoma in the F_{1b} and F_{2b} combined groups is noted in the following Table 3:

TABLE 3.—THE INCIDENCE OF TESTICULAR ADENOMAS IN F_{1b} AND F_{2b} MALE RATS

Group	Dose	Number of animals with tumors/Total number of animals	Percentage
1. Controls.....	0 ppm.....	1/19	5.0
2. Low dose.....	25 ppm.....	0/25	0
3. Mid dose.....	125 ppm.....	6/25	24.0
4. High dose.....	625 ppm.....	2/16	12.0

An increase in testicular interstitial cell adenomas was observed in F_{1b} and F_{2b} male rats at the 125 and 625 ppm dose levels and was associated with testicular hyperplasia. Although it appears that reproductive effects may have been demonstrated (reduced fertility in generations F_{2A} - F_{3A} , decreased pup survival), the study was deficient. No histological data were provided for the parental animals following their breeding or weaning of offspring. There were no gross pathology data available for the animals which

died during the study and no evaluation of the possible causes of infertility was made. Though not intended to examine oncogenic effects, this reproductive study demonstrates the oncogenic effects (testicular adenomas and hyperplasia) noted in earlier studies. The test animals were sacrificed late in their life cycle, most at 2 years of age, with the earliest at 480 days.

In response to a Data Call In Notice issued to registrants on May 18, 1986, Du Pont submitted a feeding study which investigated the effects of linuron fed to

aged male Charles River Crl:CD(SD)BR rats. At the beginning of the study, the average age of the rats was 12 months. The researchers exposed older rats in the last year of life (12 months before 24 months sacrifice) to either: (1) No linuron, (2) no linuron for 6 months and then linuron for 6 months, or (3) just linuron for 12 months. The incidence of hyperplasia and adenoma of the testes in aged male rats is demonstrated in the following Table 4:

TABLE 4.—THE INCIDENCE OF TESTICULAR ADENOMA AND HYPERPLASIA IN AGED MALE RATS

Group	Linuron exposure (ppm)	Period in life exposed	Response	
			Hyperplasia	Adenomas
1.....	0 ppm.....	None.....	8/25 (32%)	0/25 (0%)
2.....	0, then 625 ppm.....	18 to 24 mos.....	8/25 (32%)	2/25 (4%)
3.....	625 ppm, then 625 ppm.....	12 to 24 mos.....	15/25 (60%)	6/25 (24%)

Rats which were fed a normal diet for 6 months followed by 6 months of 625 ppm dietary linuron (group 2), had a non-statistically significant increase of testicular adenomas. A statistically significant increase in testicular adenomas and hyperplasia was observed in male rats fed dietary linuron for 12 months (group 3). No malignant tumors were even observed. These results support the theory that the tumorigenic effects of exposure to linuron may be age-related—i.e., age-related alterations, perhaps of a hormonal nature, may make the testicular tissue more susceptible to an oncogenic response.

After the initiation of the Special Review, du Pont also submitted a set of studies which they believed suggested that the mechanism of action of tumor formation is influenced through the pituitary-testes "feedback loop", in effect a threshold tumorigenic response. Specifically, du Pont believes that the additional data demonstrate that the formation of testicular tumors is regulated via alterations in responsiveness of the interstitial cells of the testes to luteinizing hormone (LH—LH is a hormone released from the pituitary and is important in the regulation of the growth of testicular cells) resulting in testicular hyperplasia and adenomas.

Biochemical data submitted by du Pont examined the effects of linuron upon horse testicular microsomes, testosterone clearance, and the ability of LH to induce the secretion of testosterone in Leydig cells isolated *in vitro* from rats treated repeatedly (200 mg/kg orally for 3–7 days) or treated chronically (11 or 19 months at 0, 25, 125, or 625 ppm). After review by the Agency, data from the *in vitro* study were initially suggestive of a hyperactive response of the chronically dosed rat (625 ppm) Leydig cells to LH.

To clarify the registrant's proposed mechanism of action of linuron on the hypothalamus-pituitary axis, researchers at EPA's Health Effects Research Laboratory in Research Triangle Park, North Carolina, evaluated the hormonally-regulated effects of linuron upon testicular changes in Leydig cells. Using LE-hooded male rats,

linuron was administered for 4 days (0, 50, 100 or 200 mg/kg/day) with a 3-day post-dosing period. There was no evidence that the compound produced a significant effect upon blood levels of LH, follicle-stimulating hormone, or prolactin.

After evaluating the data from du Pont and its own research laboratory, the Agency has concluded that there is no convincing evidence that the oncogenic effect of linuron is secondary to an alteration in the pituitary-testes hormonal "feedback loop". Although it is possible that linuron alters levels of some testosterone-related enzymes and the responsiveness of the testes to luteinizing hormone, additional data which explore blood hormonal levels are necessary to confirm or deny the existence of a secondary mechanism for tumorigenicity.

Although not a basis for special review, EPA was aware of the potential of linuron to cause adverse blood effects. In 1962, du Pont submitted a 2-year dog feeding study (Hodge, H.C., 1962). Four groups of six beagle dogs (three males and three females) were administered diets containing 0, 25, 125, and 625 ppm for 2 years. These levels correspond to 0, 0.625, 3.125, and 15.625 mg/kg/day. Analysis of blood revealed an abnormal blood pigment (sulfhemoglobin) in dogs fed linuron down to the lowest dose tested, 25 ppm. Thus, the lowest effect (LEL) for hematotoxicity was established at 25 ppm. (0.625 mg/kg/day).

3. *Comments on the Notice of Special Review.* During the official comment period for the Notice of Special Review, the Agency only received comments from E.I. du Pont de Nemours & Co., Inc. Du Pont stated that "the toxicological concerns expressed relative to linuron (testicular adenomas occurring in aged rats—not noted at 1-year interim sacrifice), if ranked in an accepted classification system of possible oncogens (i.e., Squires or the system which we understand that EPA is presently considering), would rank in the weakest class." This comment is discussed in the next section.

4. *Classification of the Oncogenic Potential of Linuron.* Since the initiation of the Special Review, EPA

has established Guidelines for Carcinogenic Risk Assessment (51 FR 33992, 9/24/86). These guidelines assist Agency scientists in assessing the potential for a chemical to cause cancer in humans. The guidelines categorize the overall weight of evidence for human carcinogenicity by: (1) Summarizing the weight of evidence in human and/or animal studies, (2) utilizing this information to assign a tentative category, and (3) evaluating all relevant supportive information to determine if modifications in the weight of evidence are necessary.

There are five categories of carcinogenicity. They are noted as Group A, B, C, D or E. Group A is used for those chemicals for which there is sufficient epidemiological evidence to support a causal association between human exposure and cancer.

Group B, probable human carcinogens, includes those chemicals for which there is limited human evidence of cancer (B1) and those chemicals for which there is sufficient evidence of cancer in animals but inadequate or no data of human carcinogenicity (B2).

Group C, possible human carcinogens, is used to categorize chemical agents for which there is limited evidence of carcinogenicity in animals and no human data. Within this category are chemicals with a wide range of human oncogenic potential. In some cases, the available data demonstrate a reasonable potential that the chemical is carcinogenic in humans but available data may be limited to one species. In other cases, the data set may be large but conflicting or equivocal. To distinguish those chemicals within this category where the Agency believes more data are likely to support a finding of probable human carcinogenicity, the Agency elects to classify the chemicals as Group C oncogens but to quantify their risks. Where the Agency believes the link to human carcinogenicity is weak or insufficient and that the chemical should not be regulated as a human carcinogen, it chooses not to quantify the risks. The decision regarding the strength of the link between animal and human

carcinogenicity, has to be made on a case-by-case basis. The thought process in determining whether the weight of evidence justifies quantification of its risk as a Group C carcinogen, and then whether to quantify its carcinogenic risk, is basically the same. Both decisions reflect a qualitative scientific assessment of the data and the likelihood that the effect seen in animals is indicative of human carcinogenic potential.

Group D is reserved for chemicals where available data are insufficient to assess human carcinogenic potential. Group E includes agents that show no evidence of carcinogenicity in specified animal studies.

The Office of Pesticide Programs' Peer Review Group and the Agency's Carcinogen Assessment Group reviewed the weight of evidence to determine the oncogenic potential of linuron. Both groups agree that linuron should be categorized as a Group C chemical. This conclusion is based on the following:

1. Although linuron produced a statistically significant increase in both testicular hyperplasia and adenomas in male rats and a statistically significant increase in the incidence of hepatocellular adenomas in female mice at the highest dose group tested, the tumors observed were benign in nature and showed no progression toward malignancy.

2. The tumors found in the rat oncogenicity study occurred late in the life of the test animals and were not life-threatening.

3. Linuron did not test positively in the standard battery of mutagenicity tests.

4. Historically, spontaneous formation of testicular adenomas, a relatively common type of tumor, has been observed in Charles River and Fischer rat strains. (Carcinogen Assessment Group Memorandum, J. Holder to J. Rowe, 6/2/87; Sher, S.P. et al., 1982; Huseby, R.A., 1981).

The confluence of these factors—late-forming benign testicular tumors of a relatively common tumor type in animals with a background rate of similar tumors, and lack of supporting evidence of carcinogenic potential (e.g., mutagenicity data)—all lead to a conclusion that the evidence in this case of human carcinogenic potential is weak.

Based on these factors, the Agency believes that quantification of cancer risk, and thus consideration of carcinogenicity of linuron as the endpoint of regulatory concern, is inappropriate because of linuron's low human carcinogenic potential.

On September 23, 1987, the FIFRA Scientific Advisory Panel (SAP) met to

review a set of scientific issues supporting EPA's decision to classify linuron as a Group C oncogen. The SAP was requested to comment on the Agency's assessment of the weight-of-the-evidence and subsequent determination of oncogenicity according to the Agency's Guidelines for Carcinogen Risk Assessment. The SAP agreed with the Agency's categorization of linuron as a Group C chemical.

IV. Preliminary Regulatory Decision

As noted above, the Registration Standard and the Notice of Special Review for linuron were issued in 1984, before publication of the Guidelines for Carcinogen Risk Assessment. Prior to issuance of the Guidelines, the Agency routinely quantified carcinogenic risk as a matter of policy of a dose-response relationship was demonstrated. Thus, the oncogenic risk of linuron was quantified for the Registration Standard and the Notice of Special Review. Since publication of the Risk Assessment Guidelines, EPA does not always quantify carcinogenic risk for Group C chemicals but reviews each group C chemical on a case by case basis. As discussed earlier, the Agency no longer believes that linuron risk should be quantified or that linuron exceeds the oncogenicity risk criterion.

The Agency has concluded that the available data no longer support a Special review for linuron. This determination was based not only on additional toxicological information but also upon actual crop residue data which were received after the notice of Special Review was issued. Although the Agency formerly believed that the Special Review risk criterion for oncogenicity (40 CFR 162.11(a)(3)(ii)(A)) had been exceeded and subsequently initiated a Special Review, the Agency now believes the evidence supporting the carcinogenicity of linuron in humans is of a limited nature and that the human carcinogenic potential resulting from exposure to linuron is low. Therefore, linuron can no longer be considered to pose unreasonable risks due to oncogenicity.

After concluding that the evidence supporting linuron's carcinogenicity in humans is not strong enough to support a Special Review of linuron, the Agency examined the other toxicological effect of possible concern, hematotoxicity. The Agency estimated the theoretical maximum residue concentration (TMRC), which is an estimation of the United States (U.S.) population's dietary exposure to linuron. The TMRC was then compared to the provisional acceptance daily intake (PADI), or the residue level conditionally thought to be

toxicologically safe for daily consumption. The PADI is based on the lowest effect level (LEL) for hematotoxicity, the next effect of toxicological concern, which was established in the chronic dog feeding study with a LEL of 25 ppm (0.625 mg/kg of bodyweight), noted previously. Using a three hundredfold safety factor, the PADI is calculated to be 0.002 mg/kg/day. Using actual residue values and percent of crop treated figures, the TMRC for the U.S. population was calculated to be 0.00005 mg/kg/day, equivalent to 2.5 percent of the PADI. The most highly exposed groups are non-nursing infants (0.00024 mg/kg/day, equivalent to 12.2 percent of the PADI) and nursing infants (0.00016 mg/kg/day, equivalent to 8.0 percent of the PADI). Based on the data and information considered, the Agency concludes that the actual residue levels of linuron consumed by the U.S. population present no significant risk to public health.

The multi-generation rat reproduction study noted earlier, in addition to supporting oncogenic conclusions, raised the possibility of reproductive effects. The Agency is requiring additional reproductive effects data through a Data Call In Notice to be issued shortly. Data are also being required to resolve remaining concerns about possible hematological and contaminant risks. If any of these data demonstrate that use of linuron may pose unacceptable risk, the Agency may reinstate a Special Review of linuron.

Based on the existing data, the Agency proposes to conclude this Special Review of registrations of pesticide products which contain linuron without further regulatory action.

V. Public Comment Opportunity

During the time allowed for submission of comments, specific comments are solicited on the preliminary determination set forth in this Notice. The Agency will review and consider any comments received during the official comment period before issuing the final determination to conclude the Special Review of linuron. Interested persons are invited to submit written comments on this proposal to conclude the Special Review of pesticide products which contain linuron. Comments must bear a notation indicating the document control number, [OPP-30000/41B]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available

for public inspection in Rm. 246, CM #2,
1921 Jefferson Davis Highway,
Arlington, VA, between 8 a.m. and 4
p.m., Monday through Friday, except
legal holidays.

Dated: August 8, 1988.

John A. Moore,

*Assistant Administrator for Pesticides and
Toxic Substances.*

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Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310 Stomach Acidifier Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 79N-0176]

Stomach Acidifier Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any stomach acidifier drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective, is misbranded, and is subject to regulatory action unless it has an approved new drug application (NDA). Stomach acidifiers are drugs that add hydrochloric acid to the stomach. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final rule, and all new data and information on stomach acidifier drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 19, 1979 (44 FR 60316), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify OTC stomach acidifier drug products as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by January 17, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by February 18, 1980.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final rule for OTC stomach acidifier drug products was published in the Federal Register of January 15, 1985 (50 FR 2184). Interested persons were invited to file by May 15, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 15, 1985. New data could have been submitted until January 15, 1986, and comments on the new data until March 17, 1986. Final agency action occurs with the publication of this final rule on OTC stomach acidifier drug products.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

As discussed in the proposed regulation for OTC stomach acidifier drug products (50 FR 2184), the agency advised that the conditions under which the drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions) would be effective 6 months after the date of publication of the final rule in the Federal Register. Therefore, on or after February 17, 1989, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved NDA.

In response to the proposed rule on OTC stomach acidifier drug products,

eight consumers submitted comments. No requests for oral hearing before the Commissioner were received. Copies of the comments received are on public display in the Dockets Management Branch. Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the Federal Register of November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

Six comments agreed with the agency's proposal that stomach acidifiers as a class of drugs are not generally recognized as safe and effective and are misbranded. Two comments objected to the removal of stomach acidifiers from the OTC market and presented testimonials that these drug products had provided relief from symptoms such as fainting, digestive distress, and improper "assimilation of minerals." Both comments noted that these products had been prescribed by a physician. One comment added that switching these products from OTC to prescription status would be both unnecessary, inconvenient, and an added expense.

The agency acknowledges that betaine hydrochloride, glutamic acid hydrochloride, and dilute hydrochloric acid have been traditionally prescribed for use in the conditions of achlorhydria and hypochlorhydria. However, the agency is not aware of any data nor have any been submitted to demonstrate that the administration of any of these ingredients has any therapeutic value in either condition. Moreover, as discussed in the notice of proposed rulemaking for OTC stomach acidifier drug products (50 FR 2185), recent evaluations of hydrochloric acid therapy in recognized pharmacology texts conclude that there are no established indications for hydrochloric acid use. Therefore, the agency concludes that any ingredient recommended for OTC stomach acidifier use cannot be generally recognized as safe and effective.

In reference to the comment's statement on an OTC to prescription switch, it should be noted that removal

of stomach acidifier drug products from the OTC market does not mean that these products will then be made available for prescription use. Because no stomach acidifier has been shown to be safe and effective in treating achlorhydria and hypochlorhydria, neither OTC nor prescription marketing will be permitted unless a stomach acidifier drug product is the subject of an approved NDA. Currently, no stomach acidifier drug product is the subject of an approved NDA.

II. The Agency's Final Conclusions on OTC Stomach Acidifier Drug Products

The agency has determined that no stomach acidifier active ingredient has been found to be generally recognized as safe and effective and not misbranded for use in treating achlorhydria and hypochlorhydria. Therefore, all stomach acidifier ingredients, including betaine hydrochloride, glutamic acid hydrochloride, diluted hydrochloric acid, and pepsin, which were reviewed by the Panel, are considered nonmonograph ingredients and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) and are new drugs under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved NDA under section 505 of the act (21 U.S.C. 355) and Part 314 of the regulations (21 CFR Part 314) is required for marketing. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action.

Consideration of glutamic acid hydrochloride as an ingredient in digestive aid drug products was transferred to this rulemaking (see 53 FR 2711). Accordingly, this final rule constitutes final agency action for this ingredient as an OTC stomach acidifier in both rulemakings.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the *Federal Register* of February 8, 1983 (48 FR 5806), the agency announced the availability of an

assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC stomach acidifier drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC stomach acidifier drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended to read as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049-1053 as amended, 52 Stat. 1055-1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057-1058 (21 U.S.C. 351,

352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 310.540 is added to Subpart E to read as follows.

§ 310.540 Drug products containing active ingredients offered over-the-counter (OTC) for use as stomach acidifiers.

(a) Betaine hydrochloride, glutamic acid hydrochloride, diluted hydrochloric acid, and pepsin have been present as ingredients in over-the-counter (OTC) drug products for use as stomach acidifiers. Because of the lack of adequate data to establish the effectiveness of these or any other ingredients for use in treating achlorhydria and hypochlorhydria, and because such conditions are asymptomatic, any OTC drug product containing ingredients offered for use as a stomach acidifier cannot be considered generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, or promoted for use as a stomach acidifier is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act, for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted as a stomach acidifier for OTC use is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in Part 312 of this chapter.

(d) After the effective date of the final regulation, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

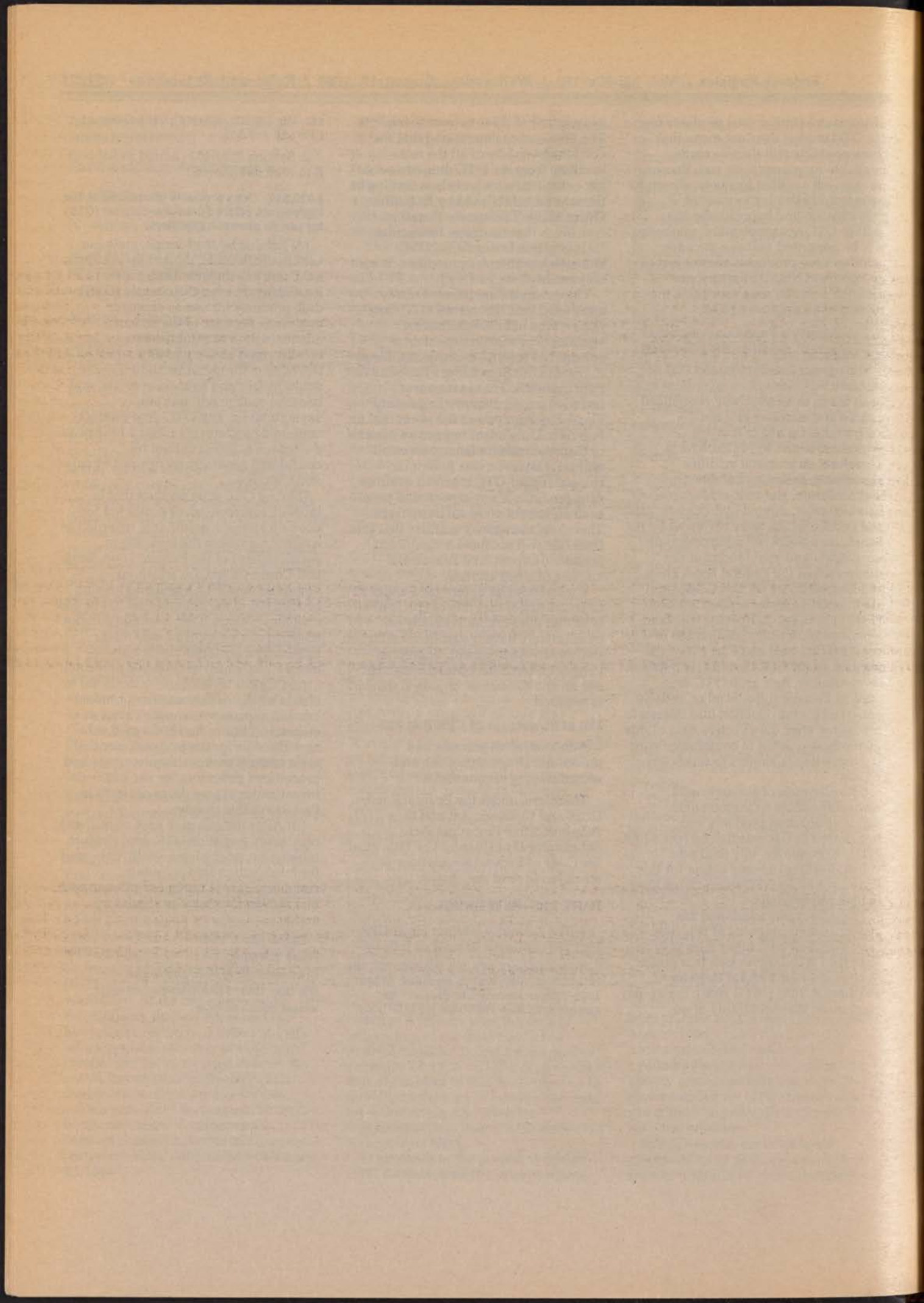
Dated: July 1, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 18561 Filed 8-16-88; 8:45 am]

BILLING CODE 4160-01-M



Wednesday
August 17, 1988

Part IX

**Department of
Housing and Urban
Development**

Office of the Assistant Secretary for
Public and Indian Housing

24 CFR Part 969

**Loan Forgiveness Under Section 3004,
Consolidated Omnibus Budget
Reconciliation Act of 1985; Continued
Operation as Lower Income Housing
After Completion of Debt Service, Public
and Indian Housing Programs; Policy
Statement**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 969

[Docket No. N-88-1836; FR-2409]

Statement of Policy—Loan Forgiveness Under Section 3004 of Consolidated Omnibus Budget Reconciliation Act of 1985; Continued Operation as Lower Income Housing After Completion of Debt Service, Public and Indian Housing Programs

AGENCY: Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Policy statement.

SUMMARY: Section 3004 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, (April 7, 1986), provides for the cancellation of loans made by the Secretary of HUD under section 4(a) of the United States Housing Act of 1937. Other statutory, as well as regulatory and contractual, provisions which govern the public and Indian housing programs require that certain public housing agencies (PHAs, which term is used throughout this Statement of Policy to include Indian Housing Authorities, or IHAs) maintain the lower income nature of a public housing project after the completion of debt service on the project in the event that operating subsidy is received. HUD announces its policies regarding the administration of these requirements in the case where loans are forgiven pursuant to section 3004 prior to the originally anticipated date of retirement of the obligations. HUD also announces its policies regarding the effect of section 3004 on projects administered under various homeownership programs.

DATE: Comments due: October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph Sens, Room 4226, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (202) 755-7290. A telecommunications device for the deaf (TDD) is available at (202) 472-6725. [These are not toll free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 3004 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99-272, amended section 4 of the United States Housing Act of 1937 (USH Act) by authorizing the Secretary of HUD to cancel any loan made by the Secretary under section 4(a) of the USH Act that has any

principal amount outstanding or any interest amount outstanding or accrued (other than loans the repayment of which was not to be made using annual contributions). The amendment expressly provides that "the terms and conditions of any contract, or any amendment to a contract, for such loan with respect to any promise to repay such principal and interest shall be canceled."

The amendment also provides that "such cancellation shall not affect any other terms and conditions of such contract, which shall remain in effect as if the cancellation had not occurred." This provision does not expressly mandate continued operation of the public or Indian housing project but does preserve "any other terms and conditions" of the Annual Contributions Contract (ACC) which are to "remain in effect as if the cancellation had not occurred."

There are other requirements which pertain to continued operation of projects. HUD regulations at 24 CFR Part 969 provide that PHAs which receive operating subsidy under section 9 of the USH Act must maintain the lower income nature of the public housing project for a period of ten years after the end of the last PHA fiscal year for which operating subsidy is paid with respect to the project. The requirement applies notwithstanding the completion of debt service, and the payment of annual contributions for such debt service, on the project.

II. Implementation of COBRA

The loan forgiveness legislation is not self-executing. Section 3004 authorizes the Secretary to cancel the loans. In order to facilitate an efficient, harmonious process of cancellation, the Department on August 4, 1987, issued HUD Notice PIH 87-12 captioned "Public and Indian Housing Rental Development and Modernization—Forgiveness and Excess Financing." This Notice implemented the COBRA loan forgiveness provisions by prescribing a method for determining the amount to be forgiven and by providing a form of amendment to the ACC ("Lower Income Public and Indian Housing Debt Forgiveness Amendment to Consolidated Annual Contributions Contract," hereafter "the ACC Amendment") to accomplish the cancellation of the loan. This form of amendment not only effects the cancellation of loans for applicable development and modernization projects but also addresses the disposition of public and Indian housing projects and the effects of loan

cancellation on residual receipts from rental and Turnkey III projects.

While many PHAs have executed the amendment, many others have expressed concern about its effect in three respects. First, PHAs have questioned the rationale and operation of the related provisions dealing with disposition and residual receipts. Second, some PHAs have contended that where the loan is forgiven pursuant to COBRA and the PHA does not receive operating subsidy for the project, it should receive "programmatic relief" from the provisions of the ACC and, generally, from the USH Act and its regulations. Third, some PHAs and PHA organizations have inquired why any amendment of the ACC is necessary.

In response to these concerns, by memorandum of December 11, 1987, HUD advised its Field Offices that the policies in HUD Notice PIH 87-12 calling for execution of the debt forgiveness ACC Amendment were temporarily suspended. It further advised that this Statement of Policy would be issued. This Statement of Policy is principally directed to answering those three questions.

In addition, concerns have also been raised regarding the impact of COBRA on "old" mutual help homeownership projects (i.e., projects developed prior to March 9, 1976). Some interested parties contend that COBRA triggers provisions in the "old" mutual help homeownership agreement executed between the IHA and the mutual help participant providing for immediate transfer of the housing authority's interest in the homeownership unit to the participant. The homeownership agreement for the Homeownership Program for Low-Income Families, also known as the "old" Turnkey III Program (i.e., projects developed prior to October 9, 1973), contains similar language. This Statement of Policy will also address the impact of COBRA on these agreements. The current mutual help and Turnkey III programs use revised homeownership agreements which do not raise concerns related to transfer of the unit to the homebuyer as a result of COBRA. Nevertheless, this statement of Policy shall address implementation of loan forgiveness for these homeownership programs too. (Hereafter the terms Turnkey III "homebuyers" and mutual help "participants" shall be referred to as "homebuyers").

III. Ancillary Provisions of ACC Amendment

Specific questions have been raised with respect to two elements of the ACC

Amendment dealing with project disposition and with residual receipts.

Paragraph 6.d. of the ACC Amendment would insert a new section 308(B) of the ACC which is not based on loan forgiveness under section 3004. Instead, it implements the provisions of section 18 of the USH Act, as added by the Housing and Urban-Rural Recovery Act of 1983, being titles I through V of the Domestic Housing and International Recovery and Financial Stability Act, Pub. L. 98-181 November 30, 1983). Section 18 (which recently was further amended by section 121 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, February 5, 1988) and which amendments will be the subject of rulemaking) governs the disposition of public and Indian housing projects. The ACC Amendment essentially tracked the statutory and regulatory implementation of section 18.

Question has been raised specifically about the deletion of existing Section 308(B), which governs the disposition of "excess real property" of a PHA, and the substitution of the new text. Some PHAs have expressed concern that the ACC Amendment would make contractual requirements of what are now "only" statutory and regulatory provisions and that while HUD can waive the regulations, it might be more difficult to change the contract. The Department disagrees with this construction of the contractual provisions. First, as noted, the disposition provisions must be followed as a matter of statute under section 18. Second, if the Department were inclined to waive the regulation, presumably it would be equally amenable to modifying, or waiving, the contractual provision for the same purpose.

Concern has also been expressed about a perceived difference between the regulation and the ACC Amendment which latter provision has been read as not authorizing the use of disposition proceeds to acquire lower income housing. Section 18 authorizes among the eligible uses of net proceeds to provide housing assistance for lower income housing or the *acquisition*, development, or rehabilitation of other properties to operate as lower income housing" (emphasis added). The eligibility provisions of § 970.9(b)(2) of the regulation use the same language. The word "acquisition" was inadvertently omitted from the ACC Amendment. Although it is arguable that the term "development" embraces acquisition, the form of ACC Amendment will be changed to specify acquisition because the statute and the

regulation both mention acquisition explicitly.

The second ancillary provision which some PHAs have questioned is paragraph 6.e. which would amend section 416(C) of the ACC to include a statement that—

If no further annual contributions for either debt service or operations are payable, the Local Authority [i.e., PHA] shall deposit any residual receipts into a replacement reserve to be used to reduce the future need for annual contributions to modernize its projects.

Existing section 416(C) of the ACC implements the statutory requirement that residual receipts be applied to the reduction of annual contributions, and PHAs are required under current procedures to remit residual receipts directly to HUD. Thus, while there will no longer be debt service to pay off, still the ACC requires that residual receipts continue to flow to the Department. Section 6(e) of the USH Act requires that the ACC provide that—

* * * whenever in any year the receipts of a public housing agency in connection with a lower income housing project exceed its expenditures (including debt service, operation, maintenance, establishment of reserve, and other costs and charges), an amount equal to such excess shall be applied, or set aside for application, to purposes which in the determination of the Secretary, will effect a reduction in the amount of subsequent annual contributions.

Note that section 6(e) does not limit the mandatory use of residual receipts for debt service, but instead relates to "purposes" generally which "will effect a reduction in the amount of subsequent annual contributions."

Existing section 416(C) has implemented the statutory requirement to date by providing that such residual receipts from rental projects and Turnkey III projects be used to reduce annual contributions for debt service. Now that the loans are forgiven, the Department is seeking to meet the requirements of section 6(e), but in a way that will benefit the specific project. Accordingly, the provision in the ACC amendment under review would provide for the dedication of residual receipts in order, in the words of the statute, to "effect a reduction in the amount of subsequent annual contributions." To make the residual receipts available to the PHA, the Department has posited the following rationale: If these funds are put into a replacement reserve, that usage will have the effect of deferring and perhaps deterring a future need for modernization assistance.

However, some PHAs have not understood the reason for this provision.

They have questioned whether, if the ACC is not amended, the elimination of debt service because of loan forgiveness means that the contractual duty has expired. Further, retention of such residual receipts by the PHA, it has been argued, would not be netted out under PFS (Performance Funding System) calculations of operating subsidy. The Department believes that an exclusive focus on contractual duty, as manifested by the PHAs' position described above, ignores the statutory requirement of section 6(e), a requirement included in the United States Housing Act of 1937 long before the establishment of operating subsidy under section 9 of that Act. That is why the ACC Amendment provides for a vehicle that accomplishes two major objectives: (1) Satisfying the statutory mandate that residual receipts be used in a way that "will effect a reduction in the amount of subsequent annual contributions" and (2) allowing those funds to remain with the PHA which has generated them, when no further annual contributions are payable on its projects, rather than being remitted to HUD for reduction of annual contributions generally.

IV. "Programmatic Relief"

By "programmatic relief" is meant that proposal, advanced by some, typically smaller PHAs, which would relieve the PHA from compliance with the requirements of the ACC with respect to any project that (1) has its loan forgiven under COBRA and (2) receives no operating subsidy. This proposal has largely been limited to PHAs satisfying the foregoing two criteria because section 9(a)(2) of the USH Act provides that operating subsidy may be provided after the duration of the ACC paying off development costs only "as long as the lower income nature of such project is maintained." The Department has construed the quoted requirement to mean maintenance of lower income housing in accordance with the requirements of the Federal USH Act.

As noted in Part I, COBRA provides that the cancellation thereunder of any loan under an ACC "shall not affect any other terms and conditions of such contract, which shall remain in effect as if the cancellation had not occurred." Because this provision ensures that the ACC remains whole and in effect upon loan forgiveness, there is no statutory ambiguity as to the continued vitality of the ACC.

However, proponents of programmatic relief have pointed to what is viewed as a contractual ambiguity. Specifically,

they refer to section 518 of the ACC which provides that:

Upon payment in full of all indebtedness of the Local Authority in connection with any Project for which annual contributions are pledged, and upon payment of any other indebtedness of the Local Authority in connection with such Project to the Government, all obligations of the Government and the Local Authority under this Contract with respect to such Project shall cease and determine except as provided in Part One of this Contract and this Contract shall terminate as to such Project.

Similar language is found in Article 14.11 of the Mutual Help ACC.

Thus, under the express terms of the ACC, its obligations cease "upon payment in full of all indebtedness." But, proponents of programmatic relief assert, by virtue of the loan cancellation under COBRA there never will be payment "in full of all indebtedness."

As the Department has explored the reach of the contractual ambiguity, we have received comments not only from interested PHAs but also from Congressional leaders who were instrumental in drafting and enacting COBRA. On March 23, 1988, the Chairman of the House Committee on Banking, Finance and Urban Affairs, and the Chairman and then Ranking Minority Member of the House Subcommittee on Housing and Community Development wrote to the Department noting their understanding that the Department had been "in the process of determining the best way to implement the statutory changes." In this context they concluded that "no other reasonable interpretation is consistent with the law and the intent of the amendment" than that the ACC continues to be applicable, whether or not operating subsidies are received. On June 8, 1988, the Ranking Minority Member and another member of the Senate Committee on Banking, Housing and Urban Affairs expressed their views favoring programmatic relief and requesting a status report.

The Department responded to all of these Congressional leaders, expressly recognizing the clarity of COBRA and the ambiguity of section 518 and concluding that the cancellation of the loan should not and could not have the effect of extending the terms of the contract in perpetuity, even though there never will be payment "in full of all indebtedness." At the same time, the Department noted that it is not aware of any explicit provision in the COBRA statute, or suggestion in its legislative history, that obligations under the ACC should be terminated upon loan cancellation on the grounds the indebtedness will never be paid in full.

For these reasons, HUD's implementation of loan forgiveness steers the course between these two extremes. That is, the Department interprets the loan forgiveness legislation as providing for the ACC to run to the full term at which it otherwise would have terminated had there not been cancellation of the loan. This Statement of Policy is intended to make clear that the originally contracted for term is neither extended nor abbreviated by virtue of loan forgiveness under the ACC. Therefore, the Department does not believe programmatic relief is a viable option within HUD's administrative discretion.

V. Homeownership Projects

Generally, the definition, issues, rationale and Departmental policies regarding "programmatic relief" for the conventional public and Indian housing programs are equally applicable to the Turnkey III and mutual help homeownership programs.

However, the applicability of section 3004 to homeownership projects has raised additional issues. The Department here addresses the proposal advanced by some individuals that the loan forgiveness provisions under COBRA trigger contractual provisions in the old mutual help homeownership agreements (as well as old Turnkey III homeownership agreements) executed between the PHA and the homebuyer which provide for transfer/conveyance of the interest of the PHA in the homeownership unit to the homebuyer upon payment of the development debt on the home.

These proponents refer to section 5.c. of the "old" Mutual-Help and Occupancy Agreement (HUD-53033 July 1967) as the basis for their position. Section 17.a. of the "old" Turnkey III Homebuyers Ownership Agreement contains similar language. Section 5.c. provides:

When payment of the debt is complete, the Authority will grant, assign and/or convey to the Participant the maximum interest in the Participant's house and grounds that it can give, and the Authority and the Participant will each release the other from any further obligations under this Agreement (emphasis added).

Section 17.a. provides:

*The Homebuyer will be entitled to ownership when his share of the capital debt of the development * * * is fully paid (emphasis added).*

In addressing the impact of COBRA on the contractual language in these homeownership agreements, the Department has reviewed the Congressional intent and the express

language of section 3004, as well as the program objectives, program requirements, expectations created, and express language of the homeownership agreements.

We have concluded that loan forgiveness is limited in its applicability to these homeownership projects. To the extent loan forgiveness is applicable, it does not result in immediate conveyance of the homeownership units to the homebuyers.

As noted in Part I, section 3004 amended section 4 of the 1937 Act to authorize loan forgiveness. The last sentence of new section 4(c)(1) provides exceptions to the applicability of loan forgiveness and specifically provides:

This paragraph shall not apply to any loan the repayment of which was not to be made using annual contributions, or to any loan all or part of the proceeds of which are due a public housing agency from contractors or others (emphasis added).

The debt on these homeownership projects was not to be repaid solely with annual contributions, but with payments from the homebuyer to the PHA. In the case of old mutual help projects, section 5.a. of the Mutual Homeownership Agreement clearly provides that "the Authority will use the 'annual contributions' from the Government and the Participant's payments" to pay interest and principal on the debt (emphasis added). These homebuyer payments consist of equity payments and payments from an operating reserve. The old Turnkey III program operates in a similar manner.

As a result, it is necessary to separate and determine that portion of the debt repayable with annual contributions (which is eligible for loan forgiveness under section 3004) and that portion of the debt due to the PHA from the homebuyer and repayable from other than annual contributions (which is not eligible for loan forgiveness). According to program design, these are determinations which are based on a formula that takes into consideration several variable factors (e.g., homebuyer's annual income, the ACC loan rate, the amount of annual contributions, etc.) over the term of the ACC and homeownership agreement. Such determinations cannot be ascertained prospectively.

Accordingly, the Department has determined to implement loan forgiveness for homeownership projects incrementally on the amount of the debt repayable with annual contributions in accordance with such accounting procedures and formulas as have been established for determining the amount of annual contributions payable over the

term of the ACC and homeownership agreement. Since loan forgiveness is not applicable to that portion of the debt payable by the homebuyer to the PHA, those amounts are not eligible for loan forgiveness and are due to the authority in accordance with the terms of the homeownership agreement. Consequently, the homeownership agreements must run their entire term.

To the extent that loan forgiveness is applicable to the homeownership projects, it does not trigger immediate conveyance of the homeownership units to the homebuyers in accordance with sections 5.c. and 17.a. of the mutual help and Turnkey III agreements respectively. Under the express terms of the mutual help homeownership agreement, the IHA is to transfer its interests "when payment of the debt is complete." However, as in the case with Article 14.11 of the ACC (and as demonstrated above in the discussion of "programmatic relief" under Part IV), there will never be complete "payment of the debt" as contemplated by section 5.

As a result, the Department concludes that it would not be consistent with the objectives of these homeownership programs to continue the agreements in perpetuity or until such time as a homebuyer's payments alone (without the benefit of annual contributions) would equal the balance required to pay off the original indebtedness on the home.

Yet it appears equally inappropriate, based on program design and objectives and the original expectations of the parties, to invoke the provisions of sections 5.c. or 17.a. of the homeownership agreements to grant, assign, or convey the Authority's interest in the unit to the participant based upon a simplistic application of the loan forgiveness legislation. As indicated earlier, loan forgiveness is limited in its applicability to homeownership projects and its applicability does not resolve all the conditions precedent to conveyance of a homeownership unit.

For these reasons, and analogous to our handling of "programmatic relief" expounded at Part IV, HUD's contractual interpretation of the effect of loan forgiveness on the "old" homeownership projects steers the course between the two extremes. As in the case of section 518 and article 14.11 of the ACC, the Department interprets the effect of loan forgiveness on the homeownership agreements as providing for the agreements to run the full term at which they would otherwise have terminated had there not been forgiven of the loan. This statement of Policy is

intended to make clear that the loan term originally contracted for under the ACC is neither extended nor abbreviated by virtue of loan forgiveness.

The impact of COBRA on the current mutual help and Turnkey III homeownership programs leads to a similar result. As in the case with "old" mutual help and Turnkey III programs, a portion of the debt is due to the PHA from the homebuyer and repayable from other than annual contributions. Accordingly, these amounts are not eligible for loan forgiveness and the homeownership agreements must run their entire term before a determination of the amounts repayable out of annual contributions and homebuyer payments can be made. Since the conveyance of units under the current programs is tied to a purchase price schedule—and not directly to project debt—issues regarding conveyance applicable to the "old" mutual help or Turnkey III programs do not arise.

VI. Amendment of ACC

Several PHAs have questioned the necessity for, and the effect of, executing the ACC Amendment in connection with cancellation of the loan. For example, the National Association of Housing and Redevelopment officials issued on "Action Alert" on September 22, 1987, referring to HUD Notice PIH 87-12 (since temporarily suspended, as noted in Part III), and asserting that "the proposed ACC amendment, in apparent violation of" the provision in COBRA that loan cancellation shall not effect any other terms in the ACC, "nullifies Section 518." Others have expressed concern that execution of the ACC Amendment concedes that the ACC remains in effect, despite the cancellation of the debt. As explained in Part IV, the Department's policy is that the ACC does remain in effect, notwithstanding the cancellation of the debt. Indeed, this policy gives meaning to the provision in COBRA that the cancellation "shall not affect any other terms and conditions of such contract which shall remain in effect."

Nevertheless, it may still be asked—and some PHAs have done so—whether there is a need to amend the ACC in order for the loan to be cancelled. As indicated earlier in this Statement of Policy, the Department's intention in drafting and submitting to PHAs a form of ACC Amendment was to effect an expeditious and harmonious cancellation of the debt and to provide a vehicle for ensuring that PHAs can retain residual receipts which would otherwise have to be returned to the Federal Government. A related purpose

of the ACC Amendment was to elicit the cooperation of PHAs in establishing the amount of the debt to be cancelled. In this regard, paragraphs 2 and 3 of HUD Notice PIH 87-12 provided instructions for determining the amount of the loan to be forgiven, including submission by PHAs of Actual Development Cost Certificates (ADCCs) and Actual Modernization Cost Certificates (AMCCs), which documentation will indicate the amount of loan authority actually used in project development or modernization. Such determinations normally would be an area in which PHAs have an important self-interest in being satisfied that the appropriate amount of the loan eligible for forgiveness is identified. This is particularly so since PHAs are required to repay to HUD any excess financing provided by development or modernization loans.

There is no intrinsic legal requirement for amending the ACC in this connection. Section 405(B) of the ACC already requires the PHA to submit an ADCC/AMCC to HUD. The determination of the actual development/modernization cost contained in the certificate so approved by HUD is final and conclusive for all purposes of the ACC. But section 405(C) further provides that—

If the Local Authority shall unduly delay in the submission of the Actual Development Cost Certificate for any Project, the Government may give notice to the Local Authority that the amount of the Development Cost of such Project incurred to the date of such notice shall be considered to be the Actual Development Cost of such Project, and such notice shall constitute the Actual Development Cost Certificate for such Project for all the purposes of this Contract.

Accordingly, if a PHA does not wish to execute the ACC amendment for loan forgiveness, it is entirely within HUD's authority under the ACC to calculate the actual development or modernization cost and to cancel the loan on that basis. This could have the effect of establishing an outstanding liability on the part of the PHA for amounts determined by HUD to be excess financing. The Department has been operating with the understanding that PHAs' self-interest would constitute an incentive for collaboration in the determination of actual development/modernization cost through the ACC Amendment process. The Department is still of this view. But in no way does HUD intent to require PHAs to enter into such an ACC Amendment if for their own reasons there appear to be disincentives for doing so. From HUD's standpoint, there is an administrative

disincentive in unilaterally calculating actual development/modernization costs because it would necessitate recourse to extensive calculations under old and sometimes difficult to retrieve documentation. Nevertheless, such unilateral determination is legally feasible, even if administratively burdensome to HUD.

In any event, the Department will proceed with loan forgiveness, whether or not the PHA executes the amendment.

In this connection, the Department still recommends the execution of the ACC Amendment for loan forgiveness, but such execution is not a condition for loan cancellation. (Of course, absent an amendment to the ACC, PHAs will still

be bound under the provisions of section 416(c) to return residual receipts to HUD.) PHAs will be asked individually to inform HUD as to whether they elect to amend the ACC; if not, a PHA board resolution to that effect should be submitted.

Although this Statement of Policy does not constitute rulemaking or promulgation of a final rule, the Department is of course interested in any views that may be helpful in providing information or other advice with respect to the foregoing existing policy, which policy has been pursued by the Department since late 1987 and is now formally applicable immediately.

Comments regarding the advisability of executing or not executing ACC

amendments or other aspect of this policy may be submitted to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Each comment should include the commentor's name and address, and should refer to the title and docket number stated in the heading of this Statement of Policy. A copy of each comment will be available for public inspection during regular business hours at the above address.

Jacqueline Aamot,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-18598 Filed 8-16-88; 8:45 am]

BILLING CODE 4210-33-M

Register Federal

Wednesday
August 17, 1988

Part X

Department of Defense

**General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Part 52

**Federal Acquisition Regulation (FAR);
Examination of Records; Proposed Rule**

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation (FAR);
Examination of Records

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) clause at 52.215-2, Audit—Negotiation, to illustrate the type and form of contractor cost and financial information which is to be made available to auditors for conducting audits of contract costs.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 17, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87-38 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:**A. Background**

Specific illustrations of the type and form that books, records, documents, etc. may take are being proposed for addition to the Audit—Negotiation clause at FAR 52.215-2. This change should help to eliminate time-consuming

and inefficient access to records arguments that have occurred between auditors and contractors.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most contracts awarded as a result of negotiations are awarded to large businesses. Furthermore, the proposed revisions merely illustrate the nature of records Government auditors have access to and do not change existing requirements. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88-610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed rule changes no recordkeeping or information collection requirements or collection of information from offerors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: August 8, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

**PART 52—SOLICITATION
PROVISIONS AND CONTRACT
CLAUSES**

1. The authority citation for Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.215-2 is amended by removing in the title of the clause the date "(APR 1988)" and adding in its place the date "(JUL 1988)"; and by revising in the clause paragraphs (a) and (b) to read as follows:

52.215-2 Audit—Negotiation.

(a) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain—and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(b) *Cost of pricing data.* If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) of the Contractor (including computations and projections) related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

[FR Doc. 88-18614 Filed 8-16-88; 8:45 am]

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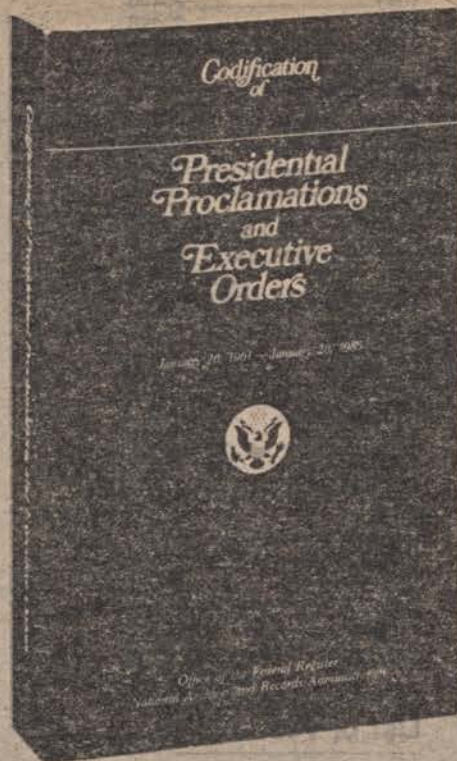
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